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AUTHENTIC COPIES

OF THE
CORRESPONDENCE

1 OF
THOMAS JEFFERSON, ESQ.

SECRETARY OF STATE TO THE UNITED STATES OF AMERICA,

AND

GEORGE HAMMOND, ESQ.

MINISTER PLENIPOTENTIARY OF GREAT-BRITAIN,

ON

THE NON-EXECUTION OF EXISTING TREATIES,

THE DELIVERING

THE FRONTIER POSTS,

AND ON THE

PROPRIETY OF A COMMERCIAL INTERCOURSE

BETWEEN

GREAT-BRITAIN AND THE UNITED STATES.

PHILADELPHIA, PRINTED:

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P A P E R S

RELATIVE TO

G R E A T - B R I T A I N .

PHILADELPHIA, Nov. 29, 1791.

Mr. Jefferson, Secretary of State, to Mr. Hammond, Minister Plenipotentiary of Great Britain.

S I R,

I N recalling your attention to the 5th article of the definitive treaty of peace between the United States of America and his Britannic Majesty, wherein it was stipulated that "his Britannic Majesty should with all convenient speed, and without causing any destruction, or carrying away any negroes, or other property of the American Inhabitants, withdraw all his armies, garrisons and fleets from the said United States, and from every post, place, and harbour within the same:" I need not observe to you that this article still remains in a state of inexecution, nor recapitulate what on other occasions has past on this subject. Of all this, I presume you are fully apprized. We consider the friendly movement lately made by the court of London, in sending a minister to reside with us, as a favourable omen of its disposition to cultivate harmony and good will between the two nations, and we are perfectly persuaded that these views will be cordially seconded by yourself in the ministry which you are appointed to exercise between us. Permit me, then, sir, to ask whether you are instructed to give us explanations of the intentions of your court as to the execution of the article above quoted?

With respect to the commerce of the two countries, we have supposed that we saw in several instances, regulations on the part of your government, which, if reciprocally adopted, would materially injure the interests of both nations,

On this subject too, I must beg the favour of you to say, whether you are authorized to conclude, or to negotiate arrangements with us which may fix the commerce between the two countries on principles of reciprocal advantage? I have the honour to be, with sentiments of the most perfect esteem and respect,

S I R, &c.

TH: JEFFERSON,

PHILADELPHIA, Nov. 30th, 1791.

Mr. Hammond, Minister Plenipotentiary of Great-Britain, to Mr. Jefferson, Secretary of State.

S I R,

I HAVE the honour of acknowledging the receipt of your letter of yesterday. With respect to the non-execution of the 7th article of the definitive treaty of peace between his Britannic Majesty and the United States of America, which you have recalled to my attention, it is scarcely necessary for me to remark to you, sir, that the king, my master, was induced to suspend the execution of that article on his part, in consequence of the non-compliance, on the part of the United States, with the engagements contained in the 4th, 5th, and 6th articles of the same treaty. These two objects are, therefore, so materially connected with each other as not to admit of separation, either in the mode of discussing them, or in any subsequent arrangements which may result from that discussion.

In stating to you, sir, this indispensable consideration, I must at the same time assure you, that, in the confidence of experiencing a similar disposition in the government of the United States, it is his Majesty's desire to remove every ground and occasion of misunderstanding which may arise between the two countries: And in conformity to that disposition in his Majesty, I can add, that I am instructed to enter into the discussion of all such measures, as may be deemed the most practicable and reasonable for giving effect to those stipulations of the definitive treaty, the execution of which has hitherto been delayed, as well by the government of this country, as by that of Great Britain.

In answer to your question on the subject of the commerce of Great-Britain and the United States, I can also inform you, sir, that the king is sincerely disposed to promote and facilitate the commercial intercourse between the two countries, and that I am authorized to communicate to this government his Majesty's readiness to enter into a negotiation for establishing that intercourse upon principles of reciprocal benefit.

Before I conclude this letter, I cannot omit mentioning the sense I entertain of the obliging expressions of personal regard, which you, sir, have been

been pleased to employ, relative to my appointment to the station which I hold in this country. I can venture to assure you, with the greatest sincerity, that it affords me the warmest satisfaction to be the medium of communicating to the United States the actual good dispositions of my sovereign and nation towards them—And I trust I may be permitted to add, that it would be the highest object of my ambition, to be the humble instrument of contributing, in any manner, to fix upon a permanent basis the future system of harmony and good understanding between the two countries.

I have the honour to be, with every sentiment of respect
and esteem, Sir,

Your most obedient and most humble servant,

GEO. HAMMOND.

PHILADELPHIA, Dec. 6th, 1791.

*Mr. Hammond, Minister Plenipotentiary of Great-Britain, to Mr. Jefferson,
Secretary of State.*

SIR,

AS I am extremely solicitous to avoid any misapprehension of my letter of the 30th ulto. I have now the honour of stating to you in explanation of that part of it to which you have adverted in yours of yesterday, that although (as I formerly mentioned in my first conversations with you after my arrival in this country) I am not as yet empowered to conclude any definitive arrangement with respect to the commercial intercourse between the two countries, I still meant it to be understood, that I am fully authorized to enter into a negotiation for that purpose, and into the discussion of such principles as may appear best calculated to promote that object, on a basis of reciprocal advantage.

I am farther authorized to receive any propositions which this government may be pleased to make to me upon this subject.

I have the honour to be, with every sentiment of
respect and esteem, Sir,

Your most obedient and most humble servant,

GEO. HAMMOND.

PHILADELPHIA, Dec. 13, 1791.

*Mr. Jefferson, Secretary of State, to Mr. Hammond, Minister Plenipotentiary
of Great-Britain.*

SIR,

IHAVE laid before the President of the United States the letters of Nov. 30 and Dec. 6th with which you honoured me, and in consequence

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quence thereof, and particularly of that part of your letter of Dec. 6th, where you say that you are fully authorized to enter into a negotiation for the purpose of arranging the commercial intercourse between the two countries, I have the honour to inform you that I am ready to receive a communication of your full powers for that purpose, at any time you shall think proper, and to proceed immediately to their object.

I have the honour to be, with sentiments of the
most perfect esteem and respect, &c.

TH: JEFFERSON.

PHILADELPHIA, Dec. 14, 1791.

*Mr. Hammond, Minister Plenipotentiary of Great-Britain, to Mr. Jefferson,
Secretary of State.*

S I R,

I N answer to your letter of yesterday, I can only repeat what I have before stated in my first conversations with you after my arrival, and subsequently in my letter of the 6th of this month; viz. that I have no special commission empowering me to conclude any definitive arrangement upon the subject of the commercial intercourse between Great-Britain and the United States: But that I conceive myself fully competent to enter into a negotiation with this government for that purpose, in the discussion of the principles which may serve as the basis, and constitute the stipulations of any such definitive arrangement.

This opinion of my competency is founded upon my instructions, in as much as they are to regulate my personal conduct, and upon the conviction that the letter of credence from his majesty, investing me with a general plenipotentiary character which I had the honour of presenting to the President of the United States, and his consequent recognition of me in that character, are authorities decidedly adequate to the commencement of a preliminary negotiation.

I have the honour to be, with sentiments
of great respect, Sir,

Your most obedient and most humble servant,

GEO. HAMMOND.

PHILADELPHIA, Dec. 15th, 1791.

*Mr. Jefferson, Secretary of State, to Mr. Hammond, Minister Plenipotentiary
of Great-Britain.*

S I R,

I AM to acknowledge the honour of your letter of Nov. 30th, and to express the satisfaction with which we learn, that you are instructed to discuss with us, the measures, which reason and practicability may dictate, for giving

giving effect to the stipulations of our treaty yet remaining to be executed, I can assure you on the part of the United States, of every disposition to lessen difficulties, by passing over whatever is of smaller concern, and insisting on those matters only, which either justice to individuals or public policy render indispensable; and in order to simplify our discussions, by defining precisely their objects, I have the honour to propose that we shall begin by specifying, on each side, the particular acts which each considers to have been done by the other, in contravention of the treaty. I shall set the example.

The provisional and definitive treaties in their 7th article stipulated that his "Britannic majesty should with all convenient speed and without causing any destruction or carrying away any negroes, or other property of the American inhabitants, withdraw all his armies, garrisons, and fleets from the said United States and from every port, place, and harbour within the same."

But the British garrisons were not withdrawn with all convenient speed, nor have ever yet been withdrawn from Michillimackinac, on lake Michigan; Detroit, on the streight of Lakes Erie and Huron; Fort Erie, on Lake Erie; Niagara, Oswego, on Lake Ontario; Oswegatchie, on the river St. Lawrence; Point Au-fer, and Dutchman's Point, on Lake Champlain.

2d. The British officers have undertaken to exercise a jurisdiction over the country and inhabitants in the vicinities of those forts; and

3d. They have excluded the citizens of the United States from navigating, even on our side of the middle line of the rivers and lakes established as a boundary between the two nations.

By these proceedings we have been intercepted entirely from the commerce of furs with the Indian nations to the northward, a commerce which had ever been of great importance to the United States, not only for its intrinsic value, but as it was the means of cherishing peace with those Indians, and of superseding the necessity of that expensive warfare we have been obliged to carry on with them during the time that these posts have been in other hands.

On withdrawing the troops from New-York, 1st. A large embarkation of negroes, of the property of the inhabitants of the United States, took place before the commissioners on our part for inspecting and superintending embarkations had arrived there, and without any account ever rendered thereof. 2d. Near three thousand others were publicly carried away by the avowed order of the British commanding officer, and under the view, and against the remonstrances of our commissioners. 3d. A very great number were carried off in private vessels, if not by the express permission, yet certainly without opposition on the part of the commanding officer,

officer, who alone had the means of preventing it, and without admitting the inspection of the American commissioners; and 4th. Of other species of property carried away, the commanding officer permitted no examination at all. In support of these facts I have the honour to enclose you documents, a list of which will be subjoined, and in addition to them, I beg leave to refer to a roll signed by the joint commissioners and delivered to your commanding officer for transmission to his court, containing a description of the negroes publicly carried away, by his order as before-mentioned, with a copy of which you have doubtless been furnished.

A difference of opinion too, having arisen as to the river intended by the plenipotentiaries to be the boundary between us and the dominions of Great-Britain, and by them called the St. Croix; which name, it seems, is given to two different rivers, the ascertaining of this point becomes a matter of present urgency: it has heretofore been the subject of applications from us to the government of Great-Britain.

There are other smaller matters between the two nations which remain to be adjusted, but I think it would be better to refer these for settlement through the ordinary channel of our ministers, than to embarrass the present important discussions with them: they can never be obstacles to friendship and harmony.

Permit me now, Sir, to ask from you a specification of the particular acts, which being considered by his Britannic majesty as a non-compliance on our part with the engagements contained in the 4th, 5th, and 6th articles of the treaty, induced him to suspend the execution of the 7th, and render a separate discussion of them inadmissible. And accept assurances of the highest respect and esteem,

With which I have the honour to be, Sir,

Your most obedient and most humble servant,

TH: JEFFERSON.

Documents referred to, and enclosed.

Extract of a letter of May 12th 1783, from Sir Guy Carleton to General Washington. Letter of May 24th 1783, from the American Commissioners to Sir Guy Carleton. Letter of May 29th 1783, from Mr. Morgan for Sir Guy Carleton to the American Commissioners.

Remonstrance of June 9th 1783, from the American Commissioners to Sir Guy Carleton. Letter of June 14th 1783, from the American Commissioners to General Washington. Extract of a remonstrance of June 17, 1783, from the American Commissioners to Sir Guy Carleton: Letter of Jan. 18th 1784, from the American Commissioners to General Washington.

Extra

*Extract of a letter from Sir Guy Carleton to General Washington of
11th May, 1783.*

"I ENCLOSE a copy of an order which I have given out to prevent the carrying away any negroes or other property of the American inhabitants. I understand from the gentlemen therein named, that they visited the fleet bound to Nova-Scotia, and ordered on shore whatever came clearly under the above description: there appeared to be but little difference of opinion except in the case of the negroes who had been declared free previous to my arrival.—As I had no right to deprive them of that liberty I found them possessed of, an accurate register was taken of every circumstance respecting them, so as to serve as a record of the name of the original proprietor of the negro, and as a rule by which to judge of his value. By this open method of conducting the business, I hoped to prevent all fraud, and whatever might admit of different constructions is left open for future explanation or compensation. Had these negroes been denied permission to embark, they would, in spite of every means to prevent it, have found various methods of quitting this place, so that the former owner would no longer have been able to trace them, and of course would have lost in every way, all chance of compensation.

This business, carried on in this public manner, and the orders nominating persons to superintend embarkations published in the gazette, I had no reason to think either the embarkation or any circumstance attending it, could have been matter of surprise to your excellency on the 6th of May. I then, however, learned with concern, that the embarkation which had already taken place, and in which a large number of negroes had been conveyed away, appeared to your excellency as a measure totally different from the letter and spirit of the treaty.

"The negroes in question I have already said I found free when I arrived at New-York. I had therefore no right, as I thought, to prevent their going to any part of the world they thought proper.

"I must confess that the mere supposition that the king's minister could deliberately stipulate in a treaty, an engagement to be guilty of a notorious breach of "the public faith," towards people of any complexion, seems to denote a less friendly disposition than I could wish, and I think less friendly than we might expect. After all, I only give my own opinion. Every negroe's name is registered, the master he formerly belonged to, with such other circumstances as serve to denote his value, that it may be adjusted by compensation, if that was really the intention and meaning of the treaty. Restoration, where inseparable from a breach of public faith, is, as the world, I think, must allow, utterly impracticable. I know of no better
method

method of preventing abuse, and the carrying away negroes, or other American property, than that I proposed to the minister for foreign affairs, in my letter of the fourteenth of April, the naming commissioners to assist those appointed by me, to inspect all embarkations, and I am pleased to find your excellency has approved of this method, and appointed Egbert Benson esquire, Lieutenant colonel Smith, and Daniel Parker esquire, one of the contractors for supplying your army with provisions, commissioners on your part for this purpose.'

I am, Sir, &c.

GUY CARLETON.

May 24th, 1783.

From the Commissioners to Sir Guy Carleton.

SIR,

WITH this we do ourselves the honour to transmit your excellency the case of James Van Derburgh Esquire, an inhabitant of this state, and conformable to the instructions contained in our commission, it becomes our duty to request that your excellency will please to direct that the claim of Mr. Van Derburgh may be enquired into, and if, on such enquiry, the facts, as stated, should be proved, that the horse may then be delivered to Mr. Van Derburgh.

We have the honour to be, &c.

EGBERT BENSON.

W. S. SMITH.

The Case of James Van Derburgh, Esquire.

MR. Van Derburgh had an horse stole from him, out of his stable, in Beekman's precinct, in Dutchess county, twenty-sixth of February 1780; and the horse was conveyed by the persons who stole him to a then British post in West Chester county, where he has since been detained, so that Mr. Van Derburgh could not recover him again. The horse is now in the possession of colonel James De Lancey, of this City, from whom Mr. Van Derburgh has demanded him, and who refuses to deliver him to Mr. Van Derburgh.

NEW-YORK, May 29th, 1783.

From Sir Guy Carleton to the Commissioners.

GENTLEMEN,

I AM directed to inform you, in answer to your letter of the twenty-fourth instant, that after the most attentive review by the commander in chief of his letter to the honourable R. R. Livingston, which has become the

the declared ground of your commission, he is not able (suspending all other considerations) to perceive either in that letter, or in any clause of your instructions, any authority for your officially claiming, on behalf of Mr. Van Derburgh, an horse, stolen or taken in Dutchess county, in the year 1780, and which you do not even suggest to be in danger of being presently embarked and carried away.

I have the honour to be, gentlemen, &c.

M. MORGANN.

NEW-YORK, 9th June, 1783.

Copy of a Remonstrance from the Commissioners to Sir Guy Carleton.

THE undersigned commissioners in behalf of the United States of America, do represent to your excellency, that, on Friday last, the board composed of the commissioners appointed by your excellency, and of the undersigned, examined into the claim of Mr. Philip Lott, to a negro, named Thomas Francis, now on board a vessel called the Fair American, in this harbour, and about to be carried off to the island of Jamaica; that on such examination it appeared to the board that Mr. Lott purchased the aforementioned negro from Mr. Elihu Spencer, of New-Jersey, and that the said negro came within the British lines the second day of November last, and was enlisted, by Captain Thelwall, in a corps distinguished by the name of the Jamaica Rangers. Captain Thelwall produced to the board a certificate, from the commandant of this city, that the said negro came within the British lines, under the sanction of the proclamation respecting negroes.

The undersigned, therefore, in conformity to that part of their commission whereby they are required "to attend particularly to the due execution of that part of the seventh article of the provisional treaty, where it is agreed, his Britannic majesty shall withdraw his armies, &c. without causing any destruction, or carrying away any negroes or other property of the American inhabitants," do request of your excellency, that the said Captain Thelwall may be prohibited from carrying away the said negro, and in conformity to that part of their commission, whereby they are required "to obtain the delivery of all negroes, and other property of the inhabitants of the United States in the possession of the British forces, or any subject or, or adherents to his Britannic majesty," do further request of your excellency that the said negro may be delivered to Mr. Lott.

The undersigned do themselves the honour, herewith, to transmit to your excellency a copy of an act of the United States in Congress assembled of the twenty-sixth of May last, which has been transmitted to them by his

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excellency

excellency general Washington, with directions to pay strict attention to the injunctions of congress contained in the said act; and as the undersigned are by their commission enjoined to represent to the commander in chief of the British forces in this city, every infraction of the articles of peace, it therefore becomes their duty to remonstrate to your excellency against your permitting any negroes, the property of the citizens of these states, to leave this city, and to insist on a discontinuance of that measure.

EGBT. BENSON.
WILLM. S. SMITH.
DANIEL PARKER.

Copy of a Letter from the Commissioners to General Washington.

NEW-YORK, June 14, 1783.

SIR,

WE do ourselves the honour to acknowledge the receipt of your excellency's letter of the second instant, covering the act of congress of the twenty-sixth ult. and we also do ourselves the honour to transmit your excellency a copy of a memorial which we presented to Sir Guy Carleton on Monday last, to which we have not, as yet, received any answer, except a verbal message by his deputy secretary, that he did not conceive an answer, at this time, necessary.

Your excellency will recollect, that in answering our claim for restitution in the case of Mr. Vanderburgh, Sir Guy Carleton intimated an impropriety in the claim, as the property was not suggested to be in danger of being sent away: this left room for an idea that, possibly, property about to be sent away would be restored, and we apprized your excellency, that we should take the first fair occasion which should present itself, to remove all doubt on this point, and with this view we made the requisition in behalf of Mr. Lott; and we conceive it is now reduced to a certainty, that all applications for the delivery of property will be fruitless, and we shall therefore desist from them.

That part of the memorial which is in the nature of a remonstrance, is in consequence of the resolution of congress, and your excellency's letter, which accompanied it.

Yesterday we assisted in superintending an embarkation, consisting of fourteen transports bound to Nova Scotia, having on board, as nearly as we could estimate, about three thousand souls, among which were at least one hundred and thirty negroes, who appeared to be property of the citizens of the United States; and as this embarkation was made since we presented our memorial, and as it were in the face of it, we submit it to your excellency, whether

whether it is necessary for us further to remonstrate to Sir Guy Carleton, against his permitting slaves, the property of American subjects, to leave this place, and could wish to receive your excellency's directions on that subject.

We have the honour to be, &c.

EGBT. BENSON.

DANIEL PARKER.

Extract of a Remonstrance from the Commissioners to Sir Guy Carleton.

NEW-YORK, June 17th, 1783.

THE undersigned commissioners, in behalf of the United States of America, did, with intent to comply with their instructions directing them "to assist such persons as should be appointed by your excellency in superintending and inspecting such embarkations as the evacuation of this place should require," on Friday last assist the commissioners appointed by your excellency in superintending and inspecting an embarkation made by direction of your excellency, and consisting of fourteen transports in the pay and service of the crown of Great Britain, bound for the province of Nova Scotia, and having on board, as near as the undersigned could estimate, at least two thousand white persons, who, a few individuals excepted, appeared to be persons in civil life, and inhabitants of the United States; and having also on board upwards of one hundred negroes, seventy-three of which appeared to be the property of American subjects not residing within the British lines.

The undersigned, therefore, in order to guard against improper inferences from their silence on this occasion, and from their conduct in future, conceive it incumbent on them to represent to your excellency, that, notwithstanding any act on their part in superintending or inspecting the above-mentioned, or any other embarkation, they do, and shall consider the permission from your excellency, to any negroes belonging to the citizens of these states, to leave this city, as an infraction of the treaty of peace, agreeable to their representation of the ninth instant; and that they do not, neither can they consider the said embarkation or any other of a similar nature, as an embarkation which the evacuation of this place requires.

NEW-YORK, 18th January, 1784.

From the Commissioners to his Excellency General Washington.

SIR,

THE British troops being wholly withdrawn from this place, it only remains to the closing the business under your excellency's commission to us of the eighth of May ult. that we should report our proceedings.

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W.

We presume it will be needless to recapitulate our former communications, and therefore take the liberty of referring to our letters to your excellency of the thirtieth of May, fourteenth and eighteenth of June last, with their respective enclosures.

As Sir Guy Carleton did not, except in one or two instances, answer our representations, we forbore to make further representation. We interpreted his silence into a determination that all future application from us should remain equally unnoticed, and therefore presumed, that they would be, not only fruitless, but also derogatory to the dignity of the sovereignty by whose authority we were commissioned.

From our first arrival in this city hitherto, we have, whenever we were formally requested, by the British commissioners, assisted them in superintending embarkations. These embarkations were always made in vessels in the pay and service of the crown of Great Britain, and the superintendence consisted in visiting the ships after they were laden and ready for sailing, and taking an account of the negroes which the captain informed us were on board, and which were also produced to us. The captains were then asked, whether they had any other American property on board. They all answered in the negative, and this was received as evidence, without further scrutiny, or examination. A descriptive list of negroes your excellency will receive with this. This list, as to the names of the negroes and places of residence of their masters, is formed from the declaration of the negroes themselves, made to the British commissioners in our presence.

We conceive it requisite to inform your excellency, that Sir Guy Carleton retained and exercised the authority of entering and clearing out merchant vessels, at this port, which were never submitted to any inspection, and consequently, it is impossible for us to determine, for a certainty, the number of negroes, or the amount of other property belonging to the citizens of the United States, which were carried away in those vessels, neither do we know that any measures were used by the British government to ascertain these points. Sir Guy Carleton affected to distinguish between the cases of such negroes as came within the British lines, in consequence of the promises of freedom and indemnity held out in the proclamations of his predecessors, and such as came in, either previous to the proclamations, or subsequent to the cessation of hostilities. Negroes of the first description he supposed not included in the treaty, as the public faith had, prior to the treaty, been pledged to them for their security against the claims of their former masters. Admitting this distinction to be just, we would mention a circumstance to your excellency, which we suppose no otherwise material, than to shew, that Sir Guy Carleton, or at least that his subordinate

diaate officers did not intend to observe the treaty, even agreeable to their own limited construction of it.

Whenever the negroes, at an inspection of an embarkation, were examined, they always, except in a very few instances, produced a printed certificate from the commandant of the city, countersigned by his secretary, purporting that they came within the British lines in consequence of the proclamations issued by Sir Henry Clinton and others. We were sensible, as there was no mode prescribed for investigating these matters, that it was impossible the commandant or his secretary could, in every case, have sufficient proof of the time of the negroes coming in, and therefore concluded there must be an abuse. In this we were not deceived; for it appears, that certificates with blanks were given by the commandant to individuals, to be filled up as their convenience might require. One of these blank certificates has fallen into our hands, and we transmit it to your excellency.

Sir Guy Carleton, during the whole of the time from our arrival in this city, until his departure, on the 25th of November, exercised the same kind of jurisdiction in this city, and on Long Island, and Staten Island, and as fully as his predecessors in command had, at any period of the war. And in the exercise of this jurisdiction, he retained the regulation of the commerce of this port, continued to lease and receive the rents of a number of houses in this city, which had been previously taken, and the rents appropriated by the British government here as belonging to persons residing without their lines, and by them, therefore, declared as being in rebellion: he refused, except in a very few instances, to restore persons, who were desirous of returning to their former habitations, the possession of their estates, and caused several citizens of the United States to be apprehended, and tried by courts martial. A considerable embarkation of negroes took place the day this city was evacuated. The hurry of business, on the part of the Britons, is the ostensible reason why we were not invited to the inspection, as appears by a letter from Captain Gilfillan.

We have the honour to be, &c.

EGBT. BENSON.

W. S. SMITH.

DAN. PARKER.

THE BLANK CERTIFICATE.

New-York, April 23d, 1783.

❖❖❖ THIS is to certify, to whomsoever it may concern, that the bearer
 ❖ B. ❖ hereof a negro, resorted to the British
 ❖❖❖ lines, in consequence of the proclamations of Sir William Howe
 and Sir Henry Clinton, late commanders in chief in America; and, that the
 said

said negro has hereby his excellency Sir Guy Carleton's permission to go to Nova Scotia, or wherever else may think proper.

By order of Brigadier general Birch, commandant of the city
and garrison of New-York, this day of April,
Annoque Domini, 1783.

E. WILLIAMS, Major of Brigade.

PHILADELPHIA, Dec. 19th, 1791.

*Mr. Hammond, Minister Plenipotentiary of Great Britain, to Mr. Jefferson,
Secretary of State.*

SIR,

I HAVE the honour of acknowledging the receipt of your letter of the 15th currt. and of expressing my perfect approbation of, and concurrence in the mode you have suggested of discussing the several particulars relative to the non-execution of the definitive treaty of peace.

In conformity to your example, I am now preparing an abstract of the circumstances that appear to me contraventions, on the part of the United States, of the fourth, fifth, and sixth articles of that treaty. This abstract I intend to present to you, sir, with as little delay as the extensive nature of the subject under consideration will admit.

I have the honour to be, with sentiments, &c.

Your most obedient humble servant,

GEO. HAMMOND.

PHILADELPHIA, March 5, 1792.

*Mr. Hammond, Minister Plenipotentiary of Great Britain, to Mr. Jefferson,
Secretary of State.*

SIR,

IN conformity to the mode which you have pursued and suggested, I have now the honour of submitting to you an abstract of such particular acts of the United States, as appear to me infractions, on their part, of the definitive treaty of peace, concluded between the king my master and the United States. The necessity of collecting from distant parts of this continent the requisite materials of combining and arranging them, has occasioned a much longer delay in presenting to you this abstract than I at first apprehended: I trust, however, that it will be found so comprehensive as to include every cause of complaint, resulting from the treaty, and so fully substantiated as to require no subsequent elucidations to prove and to confirm the facts which I shall specify.

Many of the legislative acts and judicial determinations which I shall adduce as violations of the treaty, having been common to a majority of the States, I have thought it expedient, in order to avoid repetitions, not to discuss the tendency and extent of their operation in the several States distinctly

distinctly and separately, but to reduce the infractions under general heads, and to throw into the form of an appendix references to justify and explain the documents by which they are authenticated.

Although I have employed every exertion in my power to acquire the most accurate and general information upon the respective points comprehended in this abstract, it is still possible, that many materials may have been out of my reach, or that, in the extensive collection of laws and of other documents which I have been obliged to peruse and digest, many objects may have escaped my notice. It is possible, that acts of the States, of which I have complained, as militating against the treaty of peace, may have been repealed or modified by succeeding legislatures; and that decisions of the state courts, which I have alleged as violations of the treaty, may have been rectified by subsequent determinations. I am not conscious of any errors or misrepresentations of this nature; but if any such should exist in the abstract, I desire you, sir, to be persuaded, that they have been totally unintentional on my part, and that I shall be extremely solicitous to have them explained and corrected.

Immediately after the ratification of the definitive treaty of peace, the congress of the United States, by a proclamation, announcing that event, and by a resolve dated 14th Jan. 1784, required and enjoined all bodies of magistracy, legislative, executive, and judiciary, to carry into effect the definitive articles, and every clause and sentence thereof, sincerely, strictly, and completely—and earnestly recommended to the legislatures of the respective States, to provide for the restitution of all estates, rights, and properties confiscated, belonging to real British subjects, and of estates, rights, and properties of persons resident in districts in possession of his Majesty's arms, between the 30th Nov. 1782, and 14th Jan. 1784, who had not borne arms against the United States; and that persons of any other description should have liberty to go to any part of the United States, to remain twelve months, unmolested in their endeavours to obtain the restitution of their estates, rights, and properties confiscated. It was also recommended to the several States to reconsider and revise all laws regarding the premises, so as to render them perfectly consistent with justice, and that spirit of conciliation, which, on the return of the blessings of peace, should universally prevail—and it was farther recommended, that the estates, rights, and properties of such last-mentioned persons should be restored to them, they refunding the bona fide price paid on purchasing any of the said lands, rights, and properties, since the confiscation.

In consequence of the little attention, which had been manifested to this proclamation and recommendation, and of the answer given (20 Feb. 1786) by the marquis of Carmarthen, to the requisitions of Mr. Adams, respect-

ing the posts and territories ceded by the treaty of peace to the United States, the congress transmitted, in April 1787, a circular letter to the governors of the respective States, recommending it to the different legislatures, to repeal such acts, or parts of acts, as were repugnant to the treaty of peace between his Britannic majesty and the United States, or any article thereof, and that the courts of law and equity should be directed and required, in all causes and questions cognizable by them respectively, and arising from, or touching the said treaty, to decide and adjudge, according to the tenor, true intent, and meaning of the same, any thing in the said acts or parts of acts to the contrary thereof in any wise notwithstanding.

In this circular letter, after enforcing in the most energetic manner, the regard due to solemn national compacts, and the impropriety of the individual States attempting to contravene, or even discuss stipulations, which had been sanctioned by their general government, the congress farther declare 'they have deliberately and dispassionately examined and considered the several facts and matters urged by Great Britain as infractions of the treaty of peace, on the part of America; and regret, that, in some of the States, too little attention appears to have been paid to the public faith, pledged by the treaty.

It is observable that congress, neither in this proclamation nor recommendation, take any notice of the fourth article of the treaty of peace, by which it was *agreed* that creditors on either side should meet with no lawful impediment to the recovery of the full value, in sterling money, of all bona fide debts theretofore contracted; nor does either the proclamation or recommendation extend to the stipulations in the close of the fifth article, whereby it was *agreed* that all persons who have any interests in confiscated lands, either by debts, marriage settlements, or otherwise, should meet with no lawful impediment in the prosecution of their just rights.

This omission of these essential points can only be ascribed to the conviction that congress entertained, that it was totally unnecessary to specify them, as they were stipulations positive and obligatory upon the individual States, and that no local regulation was competent either to confirm or invalidate them. It does not, however, appear that this proclamation and recommendation had any general and extensive effect upon the legislatures of the respective States, as, in consequence thereof, even the formality of a municipal adoption of the treaty, either in the nature of a repeal of existing laws, repugnant to the treaty of peace, or of a declaratory law, establishing the treaty of peace as the supreme law of the land, seems to have been confined to a small portion of the several States.

Having thus stated the measures pursued by congress to give validity and effect to the engagements contained in the treaty of peace, it is now
expedient

expedient to specify in detail, the particular acts, which Great Britain considers as infractions of the treaty, on the part of the United States, and it will tend to simplify the discussion to make the following arrangement :

I. To define what congress has enforced or omitted.

II. To advert to the conduct observed by the individual States generally, in respect to the treaty of peace,

In not repealing laws that existed antecedently to the pacification,

In enacting laws subsequent to the peace in contravention of the treaty,

And in the decisions of the State courts upon questions affecting the rights of British subjects.

As to the first of these points, it cannot be presumed, that the commissioners, who negotiated the treaty of peace, would engage in behalf of congress, to make recommendations to the legislatures of the respective States, which they did not expect to be effectual, or enter into direct stipulations, which they had not the power to enforce. And yet the laws were not repealed which congress recommended to be repealed, nor were the stipulations enforced which congress was absolutely pledged to fulfil. It does not appear—that any of the State legislatures repealed their confiscation laws, or provided for the restitution of all estates, rights and properties of real British subjects which had been confiscated, and of persons resident in districts in the possession of his Majesty's arms, who had not borne arms against the United States—that persons of other descriptions were at liberty to remain twelve months in the United States, unmolested in their endeavours to obtain the restoration of their confiscated estates, rights and properties, that the acts of the several States, which respected confiscations, were in many of the States reconsidered or revised—nor finally, have British creditors been countenanced or supported either by the respective legislatures, or by State courts, in their endeavours to recover the full value of debts, contracted antecedently to the treaty of peace. On the contrary, in some of the States, the confiscation laws have been acted upon since the peace, and new legislative regulations have been established to carry them into effect. In many of the States, the subjects of the crown, in endeavouring to obtain the restitution of their forfeited estates and property, upon refunding the price to the purchasers, have been treated with indignity—menaced, exposed to personal danger, and in some instances imprisoned. Prosecutions have been commenced against his Majesty's subjects for the part which they had taken in the late war. In many of the States, laws have actually passed, delaying the legal investigation of just claims, and abridging the demands of British merchants. Local regulations, in respect to the tender of property, in discharge of just debts, have prevailed to such an extent as to amount to a prohibition of suits. Paper

money, emitted by particular States, has been made at its nominal value, legal tender and payment for all debts, for the recovery of which actions were commenced at the time when money of that description was greatly depreciated. Creditors, too, in some of the States, were exposed to the necessity of taking real or personal property, at a valuation made by a partial, prejudiced, or interested neighbourhood; while, in other States, when the question of alienage has been under discussion, the courts of law and equity have determined, that a subject of Great Britain, residing within the king's dominions, at and after the declaration of independence, was not competent to acquire or hold real property within the United States. In many of the State courts, decisions have taken place, reducing the amount of British debts, in violation of the terms of the original contracts, and some of those courts have positively refused to take cognizance of suits instituted for the recovery of British debts. These facts will be more fully illustrated under the next head of arrangement.

II. To advert to the conduct observed by the individual States, generally, in respect to the treaty of peace.

Appendix A
No. 1 to 30,
inclusive.

1st. In not repealing the laws that existed antecedently to the pacification. During the war, the respective legislatures of the United States passed laws to confiscate and sell, to sequester, take possession of, and lease the estates of the loyalists, and to apply the proceeds thereof, towards the redemption of certificates and bills of credit, or towards defraying the expences of the war—to enable debtors to pay into the State treasuries, or loan offices, paper money, then exceedingly depreciated, in discharge of their debts. Under some of the laws, many individuals were attainted by name, others were banished for ever from the country, and, if found within the State, declared felons without benefit of clergy. In some States, the estates and rights of married women, of widows, and of minors, and of persons who had died within the territories possessed by the British arms, were forfeited. Authority also was given to the executive department to require persons who adhered to the crown, to surrender themselves by a given day, and to abide their trials for high treason; in failure of which, the parties so required were attainted, were subject to, and suffered, all the pains, penalties, and forfeitures awarded against persons attainted of high treason. In one State (New-York), a power was vested in the courts, to prefer bills of indictment against persons alive or dead, who had adhered to the king, or joined his fleets or armies (if in full life, and generally reputed to hold or claim, or, if dead, to have held or claimed, at the time of their decease, real or personal estate). And upon notice or neglect to appear and traverse the indictment, or, upon trial and conviction, the persons charged in the indictment, whether *in full life or deceased*,

were respectively declared guilty of the offences charged, and their estates were forfeited, whether in possession, reversion, or remainder. In some of the states, confiscated property was applied to the purposes of public buildings and improvements; in others was appropriated as rewards to individuals for military services rendered during the war; and, in one instance, property mortgaged to a British creditor was liberated from the incumbrance by a special act of the legislature, as a provision for the representatives of the mortgager, who had fallen in battle.

ANo. 31 & 32

No. 33.

No. 34.

A general repeal of these laws, under the stipulated exceptions, would have been a compliance with the terms of the treaty of peace. But the restitution of the estates, rights and properties of real British subjects, or of persons resident in districts in possession of his majesty's arms, and who had not borne arms against the United States, was not provided for by any local law, or general regulation; nor did any such law or regulation prevail, to support persons of other descriptions in their endeavours to obtain the restitution of such of their estates, rights, and properties, as had been confiscated. Some of the state legislatures, it is true, soon after the peace, passed acts, in conformity to the treaty, to provide against farther confiscations, and to deliver up, under certain conditions and assessments, such lands and tenements, the property of persons described in confiscation laws, as had not been confiscated by process of law. Other states have in certain instances, upon application of the children or friends of attainted persons, passed laws to restore the ownership of forfeited estates, upon the payment of a given price in depreciated certificates, and, in others, without exacting any consideration for the property restored. Acts of pardon and oblivion are also to be found in the statute book of some of the states, but fettered with such qualifications, exceptions, and restraints, as to exclude effectually from the hope of recovery or restitution, numbers who were expressly within the meaning and intention of the treaty.

2nd. In enacting laws subsequent to the peace, in contravention of the treaty.

In stating the particular acts that relate to this head of arrangement, it will be proper to place them in three classes:

1. Such as relate to the estates of the loyalists;
2. Such as respect their persons; and lastly,
3. Such as obstruct the recovery of debts due to the subjects of the crown.

1. Many of the confiscated estates being undisposed of, not only at the time the preliminary articles of peace were signed, but even after the conclusion of the definitive treaty, it would have been perfectly consistent

with justice, and that spirit of conciliation which ought to have prevailed upon the return of the blessings of peace, to have suspended the sales of property, not then disposed of, to have repealed the laws of confiscation under certain limitations, and to have restored the rights of married women, of widows, and of minors : and though the policy of the different state governments might exact a rigid adherence to forfeitures incurred by persons who had actually borne arms during the war; yet such a suspension of sales, repeal of laws, and restitution of property, might have been effected with great convenience in a number of instances, and might have been liberally extended to real British subjects, and to persons who had not borne arms against the United States, but who, from local residence, were liable to the imputation of offence, and to the operation of severe penal laws.

But immediately after the preliminary articles were signed, and for many years subsequent to the peace, acts passed the different legislatures of the United States—To confirm forfeitures and confiscations made by virtue of former laws ; to secure in their possessions, persons who had purchased forfeited lands, tenements, goods and chattels ; to sell confiscated property that remained unsold ; to resell such as had been already sold, and to which no title had been given ; and to release from their bargains, persons who had misconceived the modes of payment. In one state (Georgia), many years subsequent to the peace, an act passed to compel, under severe penalties, the discovery of debts due to merchants and subjects of the crown of Great Britain, that had been sequestered by particular regulations. Under this act, the auditor of that state has published a formal notice, manifesting his determination to pursue the rigid letter of the law, and to sequester British debts, in defiance of the solemnity of national engagements. In another State (Maryland), offers have even been held out by legislative authority, to persons, who, within limited periods, should make discovery of British property, to compound for the same by granting certain portions of such as should be discovered : and these legislative acts, extended to forfeited rights and property, generally, without discrimination or distinctions of persons plainly defined in the treaty ; distinctions which the spirit of conciliation, and the feelings of humanity most forcibly recommended, and which the respective states were fully competent to establish and enforce, when applied to estates and property, either unsold at the period of the peace, or for which (owing to the default of the purchasers), no titles had been given.

ad. In respect to the persons who under the treaty of peace were to have free liberty to come to any part of the United States. The permission in their favour was in terms the most general and unqualified ; and though the

Appendix B.

No. 1.

No. 2.

No. 3, & 4.

No. 5, & 6.

No. 7.

No. 8.

No. 9, & 10.

the period, in which persons of one description were to remain in this country, was restricted, none, however exceptionable their political conduct might have been considered by the United States, were debarred from the means of personal application, and of endeavouring to obtain the restitution of such of their estates, rights and properties as had been confiscated. As to those who, under the appellation of British subjects, had incurred no other imputation of criminality than that of adherence to their sovereign, and as to others who, though resident in districts in possession of his Majesty's forces, had not borne arms against the United States, the express provision in the treaty for the restitution of the estates and properties of persons of both these descriptions, certainly comprehended a virtual acquiescence in *their* right to reside, where their property was situated, and to be restored to the privileges of citizenship. This virtual acquiescence may be justly assumed as an argument in favour even of those who had borne arms against the United States, and who (if any instances of this kind existed) had been successful in their endeavours to obtain the restoration of their confiscated estates, on refunding to the purchasers the bona fide price that had been paid. Acts, however, of proscription, attainder, and banishment, which had passed during the war, and which extended, not only to those who had borne arms against the United States, but also to those who had borne arms against their allies; to persons who had left particular states, and gone off with the fleets or armies of Great Britain; to those who had attached themselves to, adhered to, or taken the protection of the government, fleets, or armies of Great Britain; who were, and still remained absent from the States; who had withdrawn themselves from, and still resided beyond the limits of the United States, though repealed as to certain individuals therein named, remained in full force against numbers of every description of persons defined in the treaty. And subsequent to the peace, acts passed several of the state legislatures, for the purpose of asserting the rights of the states for preserving their independence, and expelling such aliens as might be dangerous to the peace and good order of government: whereby persons who had left the states, gone off to, or taken the protection of the government, fleet, or armies of Great-Britain; or aided, assisted, or abetted the same; or had borne arms, exercised, or accepted military commands; or owned, or fitted out armed vessels to cruise against the United States or their allies; or had been joined to the fleets or armies, or to any volunteer corps of the King, or had held any office at particular boards instituted during the war; and all other absentees named in divers acts of confiscation, or who had been banished or sent out of the States, were forbidden to return without licence, at their peril, or were subject to disqualifications, to prosecution, and tedious imprisonment, if they

Appendix C.
No. 1.

No. 2, & 3.

No. 4.

No. 5.

No. 6.

No. 7, & 8.

No. 2.

C.

No. 2, 7, & 8.

- they remained after notice given to depart the state. In some states the ceremony of notice was dispensed with, and the parties upon being found therein were liable to imprisonment, to the confiscation of the property they possessed, and, in other states, to the penalty of death. In some of the
- No. 6.** states, it is true, permission was given to certain individuals to return unconditionally; but in others the indulgence was of momentary duration, and the unfortunate objects of it were then banished from their connections and friends for ever.
- No. 9 & 10.**
- No. 12, 13, 14.**
- To this it may be added, that though the treaty of peace expressly declares, That no future confiscations shall be made, nor any prosecutions commenced against any persons for or by reason of the part which they might have taken during the war, confiscation acts have passed since the preliminary articles were signed, and sales have been made of confiscated estates long since the peace. Acts have also passed for granting effectual relief in cases of trespasses, and pointing out modes for the recovery of property acquired while the king's troops occupied particular districts, whereby it was made lawful for any inhabitants of the state, who had left their places of abode, and had not since voluntarily put themselves into the power of the king's troops, to bring actions of trespass against any person who had occupied, injured, or destroyed their estate, either real or personal, within the power of the king's troops, or against persons who had received or purchased such goods or effects; and the purchasers of property, under sales made in districts occupied by the royal army, were required to restore and deliver up the same under the penalty of forfeiting treble the value of such property so obtained, and neglected to be delivered or restored; to the great inconvenience of many who had used, possessed, or acquired real and personal property, under the sanction of the only authority existing in the districts wherein the property was situated, an authority justified by the laws and usages of nations, and confirmed by the letter and spirit of the treaty of peace. The persons who were the objects of the trespass-law were still more oppressed by its operation, in consequence of a subsequent act, suspending prosecutions for acts done to promote the American cause, which was manifestly levelled at the friends of the crown, and deprived them of the means of satisfaction for those acts of outrage which had involved them in loss and ruin. And, in order to provide for the enforcement of these trespass-laws against absentees, the remedy of attachment against absconding debtors was extended to the recovery of damages sustained by the injury, destruction or occupancy of real or personal estates during the war, whereby absentees, though in a state of legal exile, were considered as absconding debtors.
- No. 15.**
- No. 16.**
- C. No. 17.**
- No. 18.**
- No. 19.**

3d. The securing of the enormous debt due from the citizens of the United States to the merchants of Great-Britain, being an object of important consideration to his majesty's government, in arranging and discussing the terms of the treaty of peace, was expressly provided for in it; though stipulations of that nature are not usual in treaties between independent nations; as the engagements of individuals of different countries are not liable to the intervention of partial local regulations, but rest upon the sacred and permanent basis of universal justice. The magnitude of this object cannot therefore be better ascertained, than by this circumstance; and accordingly a solemn and unequivocal stipulation was introduced into the treaty, "That creditors on either side should meet with no lawful impediment to the recovery of the full value, in sterling money, of all bona fide debts heretofore contracted;" a stipulation as precise and definite as to the measure and mode of recovery and payment, as it was general and unqualified in respect of the debts to be recovered. "The full value in sterling money" could only mean the value to be ascertained by the nature and terms of the original contract between debtor and creditor, and to be paid in sterling money according to the rate of exchange prevailing between the two countries. "All bona fide debts heretofore contracted," comprehended every species of debt due to the creditors on either side, contracted antecedent to, and which remained unpaid at, the period of concluding the treaty of peace.

Hitherto Great Britain has anxiously, though in vain, expected from the United States, the fulfilment of this article, in behalf of her suffering merchants: But prohibitions of suits and personal disabilities, created during the war, to commence actions, remained unrepealed, and have been protracted to periods subsequent to the peace. Acts too have passed since the peace, suspending, for a time, the recovery of debts, and the issuing of executions. Courts have been authorised by law to direct and admit the reduction of interest; and the absolute reduction of interest, for a limited number of years, has been provided for. Laws which existed before the war, compelling the creditors to take the debtor's land, at an appraised value, remained unrepealed, notwithstanding the change of circumstances in the two countries had, in some of the state courts, tended to establish principles of alienage, which have been carried to so rigorous an extent, applied to British subjects, as to inspire doubts of their competency to acquire or hold real property within the United States. New tender and valuation laws have been passed subsequent to the peace, by the operation of which creditors were reduced to the alternative, either of accepting, under partial appraisements, resulting from prescribed modes of valuation,

Append. D.
No. 1.

No. 2, 3, 4,
5, 6.
No. 7.

No. 8.

No. 9.

No. 10.

No. 11.

No. 12.

No. 13.

No. 14.

- valuation, real and personal property which bore no proportion to the value of the original debt, and for which they could command no price whatsoever, or of having the persons of their debtors protected from arrests, or discharged from executions. British subjects; and their agents, were compelled to give security to pay all just debts due from the creditors to any citizen of the state, as far as the amount of the debts to be collected, before any debtor could be compelled to make payment. Paper money emitted and made current, for a number of years, was constituted legal tender for payment and discharge of any debt, bargain or sale, bond, mortgage, specialty or contract whatsoever "already made or hereafter to be made," either *for sterling money*, silver money, dollars or any species of gold or silver. Instalment laws have passed, restraining, for a time, the commencement of suits, and then limiting the modes of recovering all debts due previous to the month of February 1782, and of obligations taken since that time for debts previously incurred; to three annual payments, of one third of the principal and interest in each successive year. These restrictions and limitations were afterwards extended to all debts contracted previous to the 1st of January, 1787; and when these limitations, in which the British merchants most patiently and benevolently acquiesced, were about to expire, a new instalment law was passed, protracting the period of payments five years longer, and restraining the recovery even of bonds or notes, given payable according to the instalments prescribed by the former acts, to the manner directed in the last instalment law.
- No. 15.
- No. 16.
- No. 17, 18, 19.
- No. 20.
- No. 21.
- No. 22.

It is worthy of observation, that this latter instalment law passed subsequent to the formation of the Federal Constitution, which ordains that all treaties, made, or which should be made, under the authority of the United States, should be the supreme law of the land, and that the judges in each state should be bound thereby, and every senator and representative of the United States, members of the several state legislatures, and all executive and judicial officers both of the United States and of the several states, were to be bound by oath or affirmation to support that constitution.

3d. The last point of discussion relates to the decisions of state courts upon questions affecting the rights of British subjects; in respect to which the dispensations of law have, for the most part, been as unpropitious to the subjects of the crown as the legislative acts of the different assemblies throughout this continent: It must however be allowed, that in one state (Massachusetts-Bay) where great property was at stake, justice has been liberally dispensed, and, notwithstanding a particular regulation of the state warranted the deduction of that portion of the interest on British debts

which

which accrued during the war, the courts, in conformity to the plain terms of the treaty, have admitted and directed the quantum of the demand to be regulated by the original contract; and where the contract bore interest, or the custom of the trade justified the charge, the full interest has been allowed to British creditors, notwithstanding the intervention of war. On the other hand it is to be lamented, that in a more distant state (Georgia) it was a received principle, inculcated by an opinion of the highest judicial authority there, that as no legislative act of the state existed, confirming the treaty of peace with Great-Britain, war still continued between the two countries; a principle which may perhaps still continue, in that state, as it is one of those that have not to this moment paid any municipal regard to the different recommendations of Congress, to the several legislatures, to repeal all laws inconsistent with the treaty of peace.

The decisions of the state courts having affected the claims and persons of British subjects, a short view will be taken of some of the most important decisions, under these two heads:

1st. In the prosecution of claims instituted by British merchants for debts contracted previous to the war, proof of the usage of the trade to allow interest after the expiration of a year on the amount of the goods shipped, or of the specific contract between the debtor and creditor, has been uniformly established, the full value of the debt to be recovered ought consequently to have been nothing short of the debt and interest according to the usage of the trade or to the terms of the contract; but under the direction of many of the courts, juries have invariably abated interest on the British debts for seven years and a half. Even the solemnity of obligations has not been found of sufficient force to secure the creditor from this deduction, it having been determined—that obligations, which on the face of the contract itself bore interest, were upon no better footing in this respect than book-debts, in which the intervention of war and the prohibitory resolves of Congress were deemed sufficient grounds to destroy the usage between the British and American trader, by abating the interest for the period the war continued—and that as the debtor was deprived of the means of making payment, unless by a violation of a positive restrictive law, prohibiting remittances as a means of strengthening the enemy, and as it would have been criminal to have remitted during the war, no man should suffer for his obedience to the laws, or be answerable for the interest, while the laws of the land restrained him from remitting the principal. The treaty of peace too, has been considered as having no effect upon this question, it having been held that the treaty only secured the mutual recovery of debts, when the amount was ascertained; but the amount of the debts was to be settled by the laws of the land.

E. No. 4. In one state particularly, in which the claim of interest has been generally involved in the recovery of British debts, that had been paid in consequence of legislative acts into the state treasury, the superior court of the state determined, that the construction of the treaty, and the acts of the state, entitled the creditor to recover the principal of his debt, and all interest thereon, which had not arisen during the war; and that, as by the intervention of war the means of recovering British debts were suspended, the claim of interest, during the suspension, was inadmissible.

It was admitted, that notwithstanding the payments into the treasury, the treaty of peace restored the right of action; but interest was recoverable only from the date of the definitive treaty.

No. 5. In one of the southern states (Virginia), where debts to a very considerable amount are depending, the suits that have been instituted for their recovery have been referred to the district courts of the state; and some of the causes having stood for several years under a mere formal continuance upon the records, have been adjourned, for difficulty, to the general court, wherein they still remain undecided, and others, it is said, have been actually dismissed. The delay of justice, operating equally as a denial of justice, would have been effectually reformed in that state, by the provisions of a particular law, giving summary relief in determining disputes wherein subjects of those countries which had acknowledged, or should hereafter recognize the independence of the United States, were parties against the citizens of that state; but unfortunately for the British creditors, upon the conclusion of peace, it was soon found that this summary relief extended to British debts in common with the claims of other Foreigners, whose sovereigns had recognized the independence of the United States, and that some of the judges favoured the idea; and so much of the act as points out and authorises the mode of proceeding in suits wherein Foreigners were parties, was repealed, and, at this moment, the means of recovery depend solely upon limitations and conditions created by local regulations, which are in direct opposition to the recommendatory resolves of Congress, and palpable infractions of the fourth article of the treaty of peace.

No. 6.

No. 7.

The few attempts to recover British debts in the county courts of that state, have universally failed; and these are the courts wherein, from the smallness of the sum, a considerable number of debts can only be recovered.

A farther hardship, under which the British creditors labour, is that they are answerable, and proceeded against by course of law, for every claim brought against them; when at this moment it is not a settled point, whether even the federal court, in that district, will entertain in their

their behalf, suits to which that jurisdiction is competent—the circuit court of the United States, after very solemn argument, having adjourned the question.

In addition to these observations, it is necessary to mention, that in some others of the southern states, there does not exist a single instance of the recovery of a British debt in their courts, though so many years have expired since the establishment of peace between the two countries.

2d. The proceedings of the State Courts, upon points which affected the persons of British subjects, have been equally repugnant to the terms of the treaty. In one state, suits have been instituted under the acts for granting a more effectual relief in cases of certain trespasses, for the recovery of damages resulting from the occupancy of estates, held in districts in the possession of his majesty's arms, by virtue of licence and permission from the commanders in chief; and though the licence and permission were pleaded, and it was stated upon the record, that after the declaration of independence by Congress, there was open war between the two countries—that the place where the estates were situated, continued in the uninterrupted possession of the royal army during the whole period they were occupied under such licence and permission, and as long as the same remained in force—that, by the treaty of peace, the claim which the subjects or citizens of either of the contracting parties had to recompence or retribution for injuries done to each other, in consequence of, or relating to the war, were mutually relinquished and released—that the parties, against whom the suits were instituted, were subjects of the crown, residing in a district occupied by the royal army, where the estate in question was situated, under the protection of the king, then at war with this country; these pleas were over-ruled by the court, as insufficient; and damages have been awarded against the parties for the time the estates were so occupied by them, to the great injury of numbers who had, during the war, actually paid a competent rent for the property they occupied under the authority of the commander in chief.

In another state, an indictment has lately been preferred against a subject of the crown, for the murder of a citizen of the United States, found under suspicious circumstances, within the royal lines. Though the grand jury did not find the bill of indictment against the party, as the facts alleged were not sufficiently proved, they postponed a farther enquiry to a future time, to give the prosecutor an opportunity of producing farther testimony, in which the court acquiesced, and refused to discharge the prisoner, observing, when the counsel moved for his discharge, that the commission for holding the court of oyer and terminer did not expire for some months, and the court would again sit before the period expired. The

E. No. 8.

No. 9.

prisoner was, however, admitted to bail, upon his own recognizance in £. 500, and two sureties in £. 250 each; but as his friends doubted the disposition of the court to determine according to the terms of the treaty, they thought it more prudent to suffer the forfeiture of the recognizances, than to put his life again into jeopardy.

In that state also, actions of trespass have been instituted, for taking and driving off cattle during the war, converting indictable offences into civil suits, with a view of eluding the stipulations of the treaty; but with what success, has not been ascertained.

Upon this last head of arrangement, it is only necessary farther to observe, that the prosecutions, in the cases specified, are all direct and positive violations of the 6th article of the treaty of peace.

From the foregoing detail it is evident, that the recommendations of Congress to the respective state legislatures have, in some of the states, been totally disregarded, and in none have produced that complete and extensive effect which Great Britain, from the stipulations of the treaty, was perfectly justifiable in expecting and requiring—that since the peace, many of the states have passed laws in direct contravention of the definitive treaty, and essentially injurious to the estates, rights and properties of British subjects, in whose favour precise distinctions were clearly defined and expressed in the treaty—that although some of the states may have repealed their exceptionable laws partially or generally, yet, in a majority of the states, they still exist in full force and validity—and that in some of the state courts, actions have been commenced and prosecuted with success against individuals, for the part they had taken in the war; which actions were, in their origin, positive contraventions of the 6th article of the treaty, and, in their consequences, materially detrimental to the rights and property of many subjects of the crown of Great-Britain. In consequence of the violation of the treaty in these particulars, great numbers of his majesty's subjects have been reduced to a state of penury and distress, and the nation of Great-Britain has been involved in the payment to them, of no less a sum than four millions sterling, as a partial compensation for the losses they had sustained.

It is further manifest, that the stipulation in the 4th article of the treaty, which provides for the recovery of the debts due to the subjects of the two countries respectively, has been not only evaded in many of the states, but that municipal regulations have been established in them, in avowed contravention of it—And that, in many instances, the means and prospect of obtaining redress are nearly as remote as ever; since, in one state, in which a sum far exceeding one million sterling is still due to British creditors, the supreme federal court has thought proper to sus-

pend,

pend, for many months, the final judgment on an action of debt brought by a British creditor; and since, in the same state, the county courts (which alone can take cognizance of debts of a limited amount) have uniformly rejected all suits instituted for the recovery of sums due to the subjects of the crown of Great-Britain.

The delay which has arisen in the administration of justice, has, with equal propriety, been stated as equivalent to an infraction of the treaty: For, by the effect of that delay, many descriptions of his majesty's subjects have been exposed, not only to material inconvenience, but, in various cases, to the ruin and absolute loss of their property.

The conduct of Great-Britain, in all these respects, has been widely different from that which has been observed by the United States. In the former country, the legislature has never harboured the intention of enacting regulations which might invalidate a national compact, or affect the sacred tenor of engagements contracted between individuals. And in the courts of law, the citizens of the United States have experienced, without exception, the same protection and impartial distribution of justice as the subjects of the crown. Examples can be adduced, of judgment having been given in favour of American creditors, in actions of debt brought even against loyalists, the whole of whose property had been seized by legislative acts of the states in which it was situated, and appropriated, in the first instance, to the liquidation of the very description of debts for which these suits were commenced against them in England.

Such is the nature of the specific facts which the king, my master, has considered as infractions of the treaty on the part of the United States, and in consequence of which his majesty has deemed it expedient to suspend the full execution, on his part, of the 7th article of that treaty. On this head also, it is necessary to premise the following evident distinction: That the king has contented himself with a mere suspension of that article of the treaty; whereas the United States have not only withheld from subjects of the crown that redress to which they were entitled under the terms of the treaty, but also many of the states have, subsequent to the peace, passed new legislative regulations in violation of the treaty, and imposing additional hardships on individuals, whom the national faith of the United States was pledged, under precise and solemn stipulations, to insure and protect from future injury.

On the grounds, therefore, of the irreparable injury which many classes of his subjects have sustained, and of the heavy expence to which the British nation has been subjected by the non-performance of their engagements on the part of the United States, the measure that the king has adopted (of delaying his compliance with the 7th article of the treaty) is perfectly

perfectly justifiable. Nevertheless, his majesty's sincere desire to remove every occasion of misunderstanding, has induced him to direct me to express his readiness to enter into a negotiation with respect to those articles of the treaty which have not been executed by the two countries respectively, and to consent to such arrangements upon the subject, as, after due examination, may now be found to be of mutual convenience, and not inconsistent with the just claims and rights of his subjects.

I have the honour to be,

With sincere respect and esteem,

Sir,

Your most obedient,

And most humble servant,

GEO. HAMMOND.

APPENDIX A.

No. 1. Act of New Hampshire, to confiscate estates of sundry persons therein named—passed November 28, 1778.

2. Act of Massachusetts-Bay, to prevent the return of certain persons therein named, and others who had left that State, or either of the United States, and joined the enemies thereof—passed in 1778.

3. Act of Massachusetts-Bay, to confiscate the estates of certain notorious conspirators against the government and liberties of the inhabitants of the late province, now state of Massachusetts-Bay—passed in 1779.

4. Act of Rhode-Island, to confiscate and sequester estates, and banish persons of certain descriptions—passed October 1775—February, March, May, June, July, August, October, 1776—February and October, 1778—February, May, August, September, October, 1779—July, September, October, 1780—January, May, 1781—June, October, November, 1782—February, May, June, October, 1783.

5. Act of Connecticut, directing certain confiscated estates to be sold—Connecticut laws, fol. 56.

6. Act of New-York for the forfeiture and sales of the estates of persons who have adhered to the enemies of the state---passed 22d October, 1779.

7. Act of New-York for the immediate sale of part of the confiscated estates—passed March 10, 1780.

8. Act of New-York approving the act of Congress relative to the finances of the United States, and making provision for redeeming that State's proportion of bills of credit to be emitted—passed 15 June 1780.

9. Act

9. Act of New-York to procure a sum in specie for the purpose of redeeming a portion of the bills emitted, &c.—passed 7 October, 1780.

10. Act of New Jersey to punish traitors and disaffected persons—passed 4 October 1776.

11. Act of New Jersey for taking charge of and leasing the real estates, and for forfeiting personal estates of certain fugitives and offenders—passed April 18, 1778.

12. A ct of New Jersey for forfeiting to and vesting in the state the real estates of certain fugitives and offenders—passed 11 December 1778.

13. Act of New Jersey, supplemental to the act (No. 10) to punish traitors and disaffected persons—passed October 3, 1782.

14. Act of Pennsylvania for the attainder of divers traitors, and for vesting their estates in the Commonwealth, if they render not themselves by a certain day—6 March, 1778.

15. Act of Delaware, declaring estates of certain persons forfeited, and themselves incapable of being elected to any office—passed 5 February 1778.

16. Act of Maryland for calling out of circulation the quota of the state, of the bills of credit issued by Congress—October 1780.

By the 11th section of this act persons indebted to creditors who had not become subjects and residents of the state, or had an agent constantly residing within the state, were, under certain regulations, authorized to pay these debts into the treasury in certain species of depreciated paper money, and the treasurer's receipt was declared good evidence, in law and equity, of the payment of such debt.

17. Act of Maryland, to seize, confiscate and appropriate all British property within the state—passed October 1780.

18. Act of Maryland to appoint Commissioners to preserve confiscated British property—passed October 1780.

19. Act of Maryland to procure a loan, and for the sale of escheat lands and the confiscated British property therein mentioned—passed October 1780.

20. Act of Virginia for sequestering British property, enabling those indebted to British subjects to pay off such debts, &c.—passed October 1777.

21. Act of Virginia concerning escheats and forfeitures from British subjects—May 1779.

22. Act of Virginia, to amend the act concerning escheats, &c.—passed May 1779.

23. Act of Virginia to amend the act concerning escheats and forfeitures—passed October 1779.

24. Act

24. Act of Virginia to adjust and regulate pay and account of officers of Virginia line---passed November 1781.

25. Act of Virginia for providing more effectual funds for redemption of certificates---passed May 1782.

26. Act of North Carolina for confiscating the property of all such persons as are inimical to the United States, &c.---passed November 1777.

27. Act of North Carolina, to carry into effect the last-mentioned act---passed January 1779.

28. Act of South Carolina, for disposing of certain estates and banishing certain persons therein mentioned---passed 26 February 1782.

29. Act of South Carolina, to amend the last-mentioned act---passed 16 March 1783.

30. Act of Georgia for inflicting penalties on, and confiscating the estates of such persons as are therein declared guilty of treason, and for other purposes therein mentioned---passed May 4, 1782.

31. Act of South Carolina to vest 180 acres of land, late property of James Holmes, in certain persons in trust for the benefit of a public school---passed 15 August 1783.

32. Act of Virginia for removal of seat of government---passed May session 1779, see No. 21.

33. Act of New Jersey to appropriate a certain forfeited estate---passed 23 December 1783.

34. Act of Maryland for the benefit of the children of major Andrew Leitch---15 June 1782.

APPENDIX B.

No. 1. Act of Massachusetts in addition to an act made and passed the present year (1784), entitled An Act for repealing two laws of this state---passed 10 November 1784, see Appendix C, No. 2.

2. Act of North Carolina to secure and quiet in their possessions all such as have or may purchase lands, goods, &c. sold or hereafter to be sold by the commissioners of forfeited estates---passed December 29, 1785.

3. Act of North Carolina, directing the sale of confiscated property---passed October session 1784.

4. Act of Georgia to authorise the auditor to liquidate the demands of such persons as have claims against the confiscated estates---passed 22 February 1785.

5. Ordinance of South Carolina for amending and explaining the confiscation act---passed 26 March 1784.

6. Act

6. Act of South Carolina to amend the confiscation act, and for other purposes therein mentioned—passed 22 March, 1786.

7. Act of Georgia, releasing certain persons from their bargains, &c.—passed 29 July, 1783.

8. Act of Georgia to compel the settlement of public accounts, for inflicting penalties, and for vesting auditor with certain powers—passed 10 February, 1787.

9. Act of Maryland to vest certain powers in the governor and council. Sec. 3d.—passed November session, 1785.

10. Act of Maryland to empower governor and council to compound with the discoverers of British property, and for other purposes—passed November session, 1788.

APPENDIX C.

See Acts of Confiscation, Banishment, &c. referred to in Appendix A, No. 1 to 30 inclusive.

No. 1. Act of North Carolina, of pardon and oblivion—passed April session, 1788.

2. Act of Massachusetts-Bay, for repealing two laws of the state, and for asserting the right of that free and sovereign commonwealth to expel such aliens as may be dangerous to the peace and good order of government—passed 24 March, 1784.

3. Act of Georgia for ascertaining the rights of aliens, and pointing out a mode for the admission of citizens—passed 7 February, 1785.

4. Act of New York to preserve the freedom and independence of the state, and for other purposes therein mentioned—passed 12 May, 1784.

5. Act of Virginia, prohibiting the migration of certain persons to that commonwealth, and for other purposes therein mentioned—passed October session, 1783.

6. Act of Virginia to explain, amend and reduce into one act the several acts for the admission of emigrants to the rights of citizenship, and prohibiting the migration of certain persons to that commonwealth—passed October session, 1786.

7. Act of North Carolina to describe and ascertain such persons as owed allegiance to the state, and to impose certain disqualifications on certain persons therein named—passed October session, 1784.

8. Act of North Carolina to amend the last-mentioned act—passed November session, 1785.

9. Act of South Carolina, restoring to certain persons their estates, and

for permitting the said persons to return, and for other purposes—26 March, 1784.

10. See Appendix A, No. 28. By Act of 26th February, 1782, penalties of confiscation and banishment were inflicted on certain persons described in lists 1, 2, 3, 4, 5, and, though it appears by the foregoing act, that the persons named in lists No. 1, 2, 3, were restored to their estates under certain assessments and limitations, and permitted to return and reside in the state under certain disqualifications, the penalties of the act of 26th February, 1782, still prevail against those persons mentioned in the lists No. 4 & 5, who are liable to suffer death, if they return to the state after being sent out of it.

11. Act of Rhode-Island to send out of the state, N. Spink and J^{no}: Underwood, who had formerly joined the enemy, and were returned into Rhode-Island—passed May 27, 1783.

12. Act of Rhode-Island to send William Young, theretofore banished, out of the state, and forbidden to return at his peril—passed 8 June, 1783.

13. Act of Rhode-Island, allowing William Brenton, late an absentee, to visit his family for one week, then sent away not to return—passed June 12, 1783.

14. Act of Rhode-Island, to banish S. Knowles (whose estate had been forfeited) on pain of death if he return—passed October, 1783.

15. Act of Pennsylvania, to attain Harry Gordon, unless he surrender himself by a given day (24 July, 1783), and the seizure of his estates by the agents of forfeited estates confirmed—passed 31 January, 1783.

This act passed after the provisional articles were signed, and the time limited for the surrender of Mr. Gordon's person was many months after the account reached the United States, part of Mr. Gordon's real estate was sold in consequence of an order of the Executive Council of Pennsylvania, made in the year 1790.

16. Act of New-York, for granting a more effectual relief in cases of certain trespasses—passed 17 March, 1783.

17. Act of Georgia to point out the mode for the recovery of property unlawfully acquired under the British usurpation, and withheld from the rightful owners, and for other purposes—passed 17 February, 1783.

18. Act of New-York, for suspending the prosecutions therein mentioned—passed 21 March, 1783.

19. Act of New-York, to amend an act, entitled, "An Act for relief against absconding and absent debtors," and to extend the remedy of the act entitled, "An Act for granting a more effectual relief in cases of certain trespasses, and for other purposes therein mentioned—passed May 4, 1784.

APPENDIX D.

No. 1. Act of North-Carolina, for establishing courts of law, and for regulating the proceedings therein. Sect. 101—passed November session, 1777.

2. Act of Virginia, for directing the mode of adjusting and settling the payment of certain debts and contracts—passed November session, 1781.

No. 3. Act of Virginia, to repeal so much of a former act as suspends the issuing executions upon certain judgments, until December, 1783—passed May session, 1782.

4. Act of Virginia, to amend an act, entitled, "An Act to repeal so much of a former Act as suspends the issuing executions on certain judgments, until December, 1783"—passed October session, 1782.

5. Act of Virginia, to revive and continue the several acts of Assembly for suspending the issuing executions on certain judgments, until December, 1783—passed October session, 1783.

6. Act of Maryland, to prevent suit on certain debts for a limited time—passed April session, 1782.

7. Ordinance of South-Carolina respecting suits for the recovery of debts—passed 26 March, 1784.

8. Act of Connecticut, relative to debts due to persons who have been and remained within the enemy's power or lines during the late war—passed May session, 1784.

9. Act of Massachusetts-Bay, directing the justices of the courts of judicature to suspend rendering judgment for any interest that might have accrued between the 19th April, 1775, and the 20th January, 1783, on debts due to British subjects—passed 9 November, 1784.

10. Old Act of Maryland.

11. { Case of Thomas Harrison's representatives, in the Chancery Court of Maryland.
Case of Bayard and Singleton, decided in North-Carolina.

12. Act of Rhode-Island to enable any debtor in gaol on execution at the suit of any creditor, to tender real or certain specific articles of personal estate—passed March, 1786.

13. Act of New-Jersey, to direct modes of proceeding on writs of fieri facias, and for transferring lands and chattels for payment of debts—13 March, 1786.

14. Act of South-Carolina, for regulating sales under executions, and for other purposes therein mentioned—passed 12 October, 1785.

15. Act of Maryland for the settlement of public accounts, and to appoint persons to collect the debts due to persons convicted of treason, and

for a specific performance of certain contracts made by British subjects previous to the revolution—passed November session, 1786.

16. Acts of Rhode-Island of May and June, 1775, of January, July and September, 1776, of February, 1777, and of May, 1786.

17. Act of New-Jersey, for making bills emitted by the act for raising a revenue of £3159. 5s. per annum for 25 years legal tender—passed 1 June, 1786.

18. Act of New-Jersey for striking and making current £100,000 in bills of credit, to be let out on loan—passed 26 May, 1786.

19. Act of Georgia, for emitting the sum of £50,000 in bills of credit, and for establishing a fund for the redemption and other purposes therein mentioned.—14 August, 1786.

20. Ordinance of South-Carolina, respecting suits for the recovery of debts—passed 26 March, 1784.

21. Act of South-Carolina, to regulate the recovery and payment of debts, and prohibiting the importation of negroes, &c.—passed 28 March, 1787.

22. Act of South-Carolina, to regulate the payment and recovery of debts, and to prohibit the importation of negroes for the time therein limited—passed 4 November, 1788.

APPENDIX E.

No. 1. Case of William Neate's executors against Comfort Sands—decided in the Supreme Court of New-York.

2. Case of Osborne against Mifflin's executors—decided in the Supreme Court of Pennsylvania.

3. Case of Hoare against Allen—decided in the same Court.

4. Case of Stewardson, administrator of Mildred against Dorsey—decided in the General Court of Maryland.

5. Act of Virginia, for the protection and encouragement of the commerce of nations acknowledging the independence of the United States of America—October session, 1779.

6. Act of Virginia, to repeal part of an act for the protection and encouragement of the commerce of nations acknowledging the independence of the United States of America—passed December 31, 1787.

7. Act of Virginia, to repeal so much of all and every act or acts of Assembly as prohibit the recovery of British debts—passed 12 December, 1787.

8. Case of Rutgers against Waddington—decided in the Mayor's Court of New-York.

9. Case of John Smith Hatfield, at a Court of Oyer and Terminer, held at Bergen, in the State of New-Jersey—in August, 1789.

PHILADELPHIA, March 30th, 1792.

*Mr. Jefferson, Secretary of State of the United States, to Mr. Hammond,
Minister Plenipotentiary of Great-Britain.*

SIR,

A CONSTANT course of business has as yet put it out of my power to prepare an answer to your letter of the 5th inst. In the mean time I have been taking measures to procure copies of the several acts therein complained of, that I might save you the trouble of producing proofs of them. My endeavours have failed in the instances below cited, of which therefore I am constrained to ask you to furnish the documents. I have prefixed to them your own marks of reference, that you may the more easily find them. I beg you to be assured that I would not have given you the trouble to produce any proofs which I could have obtained myself; and I hope it will be considered as an evidence of this, that the list subjoined is only of 13 out of 94 numbers which your Appendix specifies. Of all the rest I either have, or expect copies in consequence of the measures I have taken.

I have the honour to be, with the most perfect esteem and respect,

Sir,

Your most obedient and most humble Servant,

TH: JEFFERSON.

- A. 4. Act of Rhode-Island to confiscate and sequester estates and banish persons of certain descriptions, passed October 1775. February, March, May, June, July, August, October, 1775. February, May, June, October, 1783.
- C. 11. Act of Rhode-Island to send out of the state N. Spink and John Underwood.
- 12. Ditto, to send Wm. Young theretofore banished out of the State, &c.
- 13. Ditto, allowing Wm. Brenton to visit his family, &c.
- 14. Ditto, to banish S. Knowles, &c.
- D. 10. Old Act of Maryland.
- 16. Act of Rhode-Island of May 1786.
- E. 1, 2, 3, 4, 8, 9. The cases of Neale v. Executors, Osborne v. Missin's Executors.—Hoare v. Allen.—Stewardson v. Dorsey.—Rutgers v. Waddington.—John Smith Hatfield.

The records of these cannot be dispensed with.

PHILADELPHIA,

PHILADELPHIA, April 6, 1792.

Mr. Hammond, Minister Plenipotentiary of Great-Britain, to Mr. Jefferson,
Secretary of State of the United States.

SIR,

I HAVE been so much engaged for the last five or six days, that I have not had it in my power sooner to acknowledge the receipt of your letter of the 30th March—I have however now the honour of submitting to your consideration some few remarks on the several points contained in my statement, of which you require an explanation.

With respect to the laws of Rhode-Island, they are so blended with the journal of the general proceedings of the legislature of the state, that it was a matter of some difficulty to separate the legislative acts from the other transactions of the assembly—I therefore cannot but regret that in selecting these instances, I could make a reference only to the *dates* of the particular years in which they were passed—these last will, I trust, upon recurring to the Collection of the Laws of Rhode-Island (which book is no longer in my possession) be found to be faithfully stated—By the expression *The Old Act of Maryland*, I meant to combine the statute of the 5th of George the II. (declaring lands in the plantations to be personal estate for the payment of debts due to British merchants) with the act of assembly of that state of 1716, Ch. XVI. Sect. 2. (pointing out the mode of appraisement and delivery of the debtor's lands in common with his personal property)—This statute and colonial law have, I understand, been acted upon in the state courts of Maryland, since the establishment of its independence; but from the strict application of the principle of alienage, mentioned in the text to which this note refers, British creditors are incompetent to the holding of real estates, signed under these valuation laws, in payment of their debts.

All the cases to which you have alluded (excepting that of *Rutgers v. Waddington*, which was printed at New-York) have been collected from the manuscript notes of a friend, and I have no doubt of their being accurately reported—I wish it were in my power to furnish you with the records of them; but I beg leave to suggest to you, sir, with the utmost deference, whether those documents could not be obtained on application to the courts of the states in which the actions were tried, or the reports be supplied by the gentlemen of the law employed in the several suits.

Should this explanation not be satisfactory to you, sir, I will certainly endeavour to obtain some farther information upon the several points to which you have referred, as, after the very polite and obliging manner in which you have been pleased to express your desire of saving me trouble,

I certainly

I certainly feel it an act of reciprocal attention due from me to facilitate, by all the means in my power, your investigation of any part of the statement which I delivered to you.

I have the honour to be, with perfect respect and esteem, &c.

GEO. HAMMOND.

*Mr. Jefferson, Secretary of State of the United States, to Mr. Hammond,
Minister Plenipotentiary of Great-Britain.*

SIR,

YOUR favour of March 5th, has been longer unanswered than consisted with my wishes, to forward as much as possible explanations of the several matters it contained. But these matters were very various, and the evidence of them not easily to be obtained, even where it could be obtained at all. It has been a work of time and trouble, to collect from the different states, all the acts themselves, of which you had cited the titles, and to investigate the judiciary decisions which were classed with those acts as infractions of the treaty of peace. To these causes of delay may be added, the daily duties of my office, necessarily multiplied during the sessions of the legislature.

Section 1. I can assure you with truth, that we meet you on this occasion with the sincerest dispositions to remove from between the two countries, those obstacles to a cordial friendship, which have arisen from an in-execution of some articles of the treaty of peace. The desire entertained by this country, to be on the best terms with yours, has been constant, and has manifested itself through its different forms of administration, by repeated overtures to enter into such explanations and arrangements, as should be right and necessary, to bring about a complete execution of the treaty. The same dispositions lead us to wish, that the occasion now presented should not be defeated by useless recapitulations of what had taken place anterior to that instrument. It was with concern, therefore, I observed that you had thought it necessary to go back to the very commencement of the war, and in several parts of your letter, to enumerate and comment on all the acts of our different legislatures, passed during the whole course of it, in order to deduce from thence imputations which your justice would have suppressed, had the whole truth been presented to your view, instead of particular traits, detached from the ground on which they stood. However easy it would be to justify our country, by bringing into view the whole ground, on both sides, to show that legislative warfare began with the British parliament, that when they levelled at persons or property, it was against entire towns or countries, without discrimination of cause or conduct,

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conduct, while we touched individuals only; naming them man by man; after due consideration of each case, and careful attention not to confound the innocent with the guilty; however advantageously we might compare the distant and tranquil situation of their legislature, with the scenes in the midst of which ours were obliged to legislate, and might then ask, whether the difference of circumstance and situation would not have justified a contrary difference of conduct, and whether the wonder ought to be, that our legislatures had done so much, or so little. We will wave all this, because it would lead to recollections as unprofitable as unconciliating. The titles of some of your acts, and a single clause of one of them only, shall be thrown among the documents at the end of this letter [No. 1, 2.], and with this we will drop for ever the curtain on this tragedy!

No. 1.
2.

SECT. 2. We now come together to consider that instrument which was to heal our wounds, and begin a new chapter in our history. The state in which that found things, is to be considered as rightful: so says the Law of Nations*. L'Etat où les choses se trouvent au moment du traité doit passer pour légitime; & si l'on veut y apporter du changement il faut que le traité en fasse une mention expresse. Par conséquent toutes les choses dont le traité ne dit rien, doivent demeurer dans l'état où elles se trouvent lors de sa conclusion. Vattel, l. 4. §. 21. 'De quibus nihil dictum, ea manent quo sunt loco. Wolf, 1222. No alterations then are to be claimed on either side, but those which the treaty has provided. The moment too to which it refers, as a rule of conduct for this country at large, was the moment of its notification to the country at large.† Vattel, l. 4. §. 24.

* Le

* 'The state in which things are found at the moment of the treaty should be considered as lawful, and if it is meant to make any change in it, the treaty must expressly mention it. Consequently all things about which the treaty is silent, must remain in the state in which they are found at its conclusion.' Vattel, l. 4. §. 21.

† 'Those things of which nothing is said, remain in the state in which they are.' Wolf, 1222.

† Vattel, l. 4. §. 24. 'The treaty of peace binds the contracting parties from the moment it is concluded, as soon as it has received its whole form, and they ought immediately to have it executed.—But this treaty does not bind the subjects, but from the moment it is notified to them.' And, S. 25. 'The treaty becomes, by its publication, a law for the subjects, and they are obliged, thenceforward, to conform themselves to the stipulations therein agreed on.'

'The paction of the peace binds the contractors immediately as it is perfect, since the obligation is derived from the pact; but the subjects and soldiers

Le traité de paix oblige les *parties contractantes* du moment qu'il est conclu, aussitôt qu'il a reçu toute sa forme; & elles doivent procurer incessamment l'exécution—mais ce traité n'oblige les *sujets* que du moment qu'il leur est notifié—and S. 25. 'Le traité devient *par la publication*, une loi pour les sujets, et ils sont obligés de se conformer désormais aux dispositions dont on y est convenu.'—And another author as pointedly says, 'Pactio pacis *paciscentes* statim obligat quam primum *perfecta*, cum ex pacto veniat obligatio. Subditos vero et milites, quam primum *iisdem* fuerit *publicata*; cum de eâ *ante publicationem* *ipsis* certo constare non possit.' Wolf, f. 1229. It was stipulated indeed by the IXth article, that 'if before its arrival in America,' any place or territory belonging to either party should be conquered by the arms of the other, it should be restored. This was the only case in which transactions intervening between the signature and publication were to be nullified.

Proceedings
prior to
treaty.

Congress, on the 24th of March 1783, received informal intelligence from the Marquis de la Fayette, that provisional articles were concluded; and on the same day, they received a copy of the articles, in a letter of March 19th, from general Carleton and admiral Digby. They immediately gave orders for recalling all armed vessels, and communicated the orders to those officers, who answered on the 26th and 27th, that they were not authorized to concur in the recall of armed vessels, on their part. On the 11th of April, Congress receive an official copy of these articles from Doctor Franklin, with notice that a preliminary treaty was now signed between France, Spain, and England. The event having now taken place on which the provisional articles were to come into effect, on the usual footing of preliminaries, Congress immediately proclaim them, and on the 19th of April, a cessation of hostilities is published by the Commander in Chief. These particulars place all acts preceding the 11th of April, out of the present discussion, and confine it to the treaty itself, and the circumstances attending its execution. I have therefore taken the liberty of extracting from your list of American Acts, all those preceding that epoch, and of throwing them together in the paper, No. 6, as things out of question. The subsequent acts shall be distributed, according to their several subjects of I. Exile and Confiscation. II. Debts, and III. Interest on those debts. Beginning I. with those of exile and confiscation, which will be considered together, because blended together in most of the acts, and blended also in the same article of the treaty.

Document
No. 3.

Document
No. 4 & 5.

Journal
Congress.

No. 6.

Exile and
Confisca-
tion.

diers as soon as it is published to them; since they cannot have certain evidence of it before its publication. Wolf, f. 1229.

S. 3. It cannot be denied that the state of war strictly permits a nation to seize the property of its enemies found within its own limits, or taken in war, and in whatever form it exists, whether in action or possession. This is so perspicuously laid down by one of the most respectable writers on subjects of this kind, that I shall use his words, “ * Cum ea sit belli conditio, ut hostes sint omni jure spoliati, rationis est, quaeunque res hostium, apud hostes inventas dominum mutare, et fisco cedere. Solet praeterea in singulis fere belli indictionibus constitui, ut bona hostium, tam apud nos reperta quam capta bello publicentur. Si merum jus belli sequamur, etiam immobilia possent vendi, et eorum pretium in fiscum redigi, ut in mobilibus obtinet. Sed in omni fere Europa sola fit annotatio, ut eorum fructus, durante bello, percipiat fiscus, finito autem bello, ipsa immobilia ex pactis restituuntur pristinis dominis.” Bynkersh. Quest. Jur. Pub. lib. I. c. 7. Every nation, indeed, would wish to pursue the latter practice, if under circumstances leaving them their usual resources. But the circumstances of our war were without example, excluded from all commerce, even with neutral nations, without arms, money, or the means of getting them abroad, we were obliged to avail ourselves of such resources as we found at home. Great Britain too, did not consider it as an ordinary war, but a rebellion; she did not conduct it according to the rules of war, established by the law of nations, but according to her acts of parliament, made from time to time, to suit circumstances. She would not admit our title even to the *strict rights* of ordinary war. She cannot then claim from us its *liberalities*, yet the confiscations of property were by no means universal, and that of debts still less so. What effect was to be produced on them by the treaty, will be seen by the words of the Vth Article, which are as follows.

S. 4. Article 5th. It is agreed, that the Congress shall earnestly recommend it to the Legislatures of the respective States, to provide for the

“ Since it is a condition of war that enemies may be deprived of all their rights, it is reasonable that every thing of an enemy's found among his enemies, should change its owner, and go to the treasury. It is moreover usually directed, in all declarations of war, that the goods of enemies, as well those found among us, as those taken in war, shall be confiscated. If we follow the mere right of war, even immoveable property may be sold, and its price carried into the treasury, as is the custom with moveable property. But in almost all Europe, it is only notified that their profits, during the war, shall be received by the treasury, and the war being ended, the immoveable property itself is restored by agreement to the former owner.” Bynk. Quest. Jur. Pub. l. i. c. 7.]

restitution

restitution of all estates, rights and properties, which have been confiscated, belonging to real British subjects, and also, of the estates, rights, and properties of persons resident in districts in the possession of his Majesty's arms, and who have not borne arms against the said United States; and that persons of any other description shall have free liberty to go to any part or parts of any of the thirteen United States, and therein to remain twelve months unmolested in their endeavours to obtain the restitution of such of their estates, rights, and properties as may have been confiscated: And that Congress shall also earnestly recommend to the several States, a reconsideration and revision of all acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent, not only with justice and equity, but with that spirit of conciliation, which on the return of the blessings of peace should universally prevail: And that Congress shall also earnestly recommend to the several States, that the estates, rights, and properties of such last mentioned persons shall be restored to them, they refunding to any persons who may be now in possession, the bona fide price (where any has been given) which such persons may have paid on purchasing any of the said lands, rights, or properties, since the confiscation. And it is agreed, that all persons who have any interest in confiscated lands, either by debts, marriage settlements, or otherwise, shall meet with no lawful impediment in the prosecution of their just rights.

"Article VIth. That there shall be no future confiscations made."

S. 5. Observe that in every other article, the parties agree expressly, that such and such things *shall be done*. In this, they only agree to *recommend* that they shall be done. You are pleased to say, (Page 7.) "It cannot be presumed, that the Commissioners who negotiated the treaty of peace, would engage, in behalf of Congress, to make *recommendations* to the Legislatures of the respective States, which they did not expect to be effectual; or enter into direct stipulations, which they had not the power to enforce." On the contrary, we may fairly presume, that if they had had the power to *enforce*, they would not merely have *recommended*. When in every other article, they agree expressly *to do*, why in this, do they change the style suddenly, and agree only to *recommend*?—Because the things here proposed to be done, were retrospective in their nature, would tear up the laws of the several States, and the contracts and transactions, private and public, which had taken place under them; and retrospective laws were forbidden by the constitutions of several of the States. Between persons whose native language is that of this Treaty, it is unnecessary to explain the difference between *enacting* a thing to be done, and *recommending* it to be done; the words themselves being as well understood, as any by which they could be explained. But it may not

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Recommendatory by
express
words.

Write and
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tion.

be unnecessary to observe, that *recommendations* to the people, instead of *laws*, had been introduced among us, and were rendered familiar in the interval between discontinuing the old, and establishing the new governments. The Conventions and Committees who then assembled, to guide the conduct of the people, having no authority to oblige them by law, took up the practice of simply recommending measures to them. These recommendations they either complied with or not, at their pleasure. If they refused, there was complaint, but no compulsion. So after organizing the governments, if at any time it became expedient that a thing should be done, which Congress, or any other of the organized bodies were not authorized to ordain, they simply recommended and left to the people, or their Legislatures, to comply, or not, as they pleased. It was impossible that the negociators on either side should have been ignorant of the difference between agreeing *to do* a thing, and agreeing only to *recommend* it to be done. The import of the terms is so different, that no deception or surprize could be supposed, even if there were no evidence that the difference was attended to, explained and understood.

Sense of ne-
gociators.

S. 6. But the evidence on this occasion removes all question. It is well known, that the British Court had it extremely at heart, to procure a restitution of the estates of the refugees who had gone over to their side : that they proposed it in the first conferences, and insisted on it to the last : that our commissioners, on the other hand, refused it from first to last, urging first, That it was unreasonable to restore the confiscated property of the refugees, unless they would reimburse the destruction of the property of our citizens, committed on their part ; and 2dly, That it was beyond the powers of the Commissioners to stipulate, or of Congress to enforce. On this point, the treaty hung long. It was the subject of a special mission, of a confidential agent of the British negociator from Paris to London. It was still insisted on, on his return, and still protested against by our commissioners : And when they were urged to agree only, that Congress should *recommend* to the state legislatures to restore the estates, &c. of the refugees, they were expressly told that the Legislatures would not regard the recommendation. In proof of this, I subjoin extracts from the letters and journals of Mr. Adams and Dr. Franklin, two of our commissioners, the originals of which are among the records of the Department of State, and shall be open to you for a verification of the copies. These prove, beyond all question, that the difference between an express agreement to do a thing and to recommend it to be done, was well understood by both parties, and that the British negociators were put on their guard by those on our part, not only, that the Legislatures would be free to refuse, but that they

No. 7, 8, 9,
10, 11, 12.

they probably would refuse. And it is evident, from all circumstances, that Mr. Oswald accepted the *recommendation* merely to have something to oppose to the clamours of the refugees, to keep alive a hope in them, that they might yet get their property from the State Legislatures; and that, if they should fail in this, they would have ground to demand indemnification from their own government; and he might think it a circumstance of present relief at least, that the question of indemnification by them should be kept out of sight, till time and events should open it upon the nation insensibly.

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tion.

S. 7. The same was perfectly understood by the British ministry, and by the members of both Houses of Parliament, as well those who advocated as those who opposed the treaty; the latter of whom being out of the secrets of the negotiation, must have formed their judgments on the mere import of the terms. That all parties concurred in this exposition will appear by the following extracts from the parliamentary register; a work which, without pretending to give what is spoken with verbal accuracy, may yet be relied on, we presume, for the general reasoning and opinion of the speakers.

Sense of
ministers.

HOUSE OF COMMONS.

The preliminary articles under consideration: 1783, Feb. 17th.—Mr. Thomas Pitt. “That the interest of the sincere loyalists was as dear to him, as to any man; but that he could never think it would have been promoted by carrying on that unfortunate war which parliament had in fact suspended before the beginning of the treaty; that it was impossible, after the part Congress was pleased to take in it, to conceive that their *recommendation* would not have its proper influence on the different Legislatures; that he did not himself see what more could have been done on their behalf, except by renewing the war for their sakes, and increasing our, and their calamities. 9 Debrett's Parl. Register, 233.

Sense of
parliament.

Mr. Wilberforce. “When he considered the case of the loyalists, he confessed he felt himself there conquered, there he saw his country humiliated; he saw her at the feet of America! Still he was induced to believe, that Congress would religiously comply with the article, and that the loyalists would obtain redress from America. Should they not, this country was bound to afford it them. They must be compensated: Ministers, he was persuaded, meant to keep the faith of the nation with them, and he verily believed, had obtained the best terms they possibly could for them.” Ib. 236.

Mr. Secretary Townshend. “He was ready to admit, that many of the loyalists had the strongest claims upon this country; and he trusted, should the *recommendation* of Congress to the American States prove unsuccessful

successful



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tion.

cessful, which he flattered himself would not be the case, this country would feel itself bound in honour to make them full compensation for their losses." Ib. 262.

HOUSE OF LORDS, February 17th, 1783.

Lord Shelburne. "A part must be wounded, that the whole of the empire may not perish. If better terms could be had, think you, my Lords, that I would not have embraced them? You all know my creed. You all know my readiness. If it were possible to put aside the bitter cup the adversities of this country presented to me, you know I would have done it: but you called for peace. I had but the alternative, either to accept the terms, said Congress, of our recommendation to the States in favour of the Colonists, or continue the war. It is in our power to do *no more than recommend*. Is there any man who hears me, who will clap his hand on his heart, and step forward and say, I ought to have broken off the treaty? If there be, I am sure he neither knows the state of the country, nor yet has he paid any attention to the wishes of it. But say the worst—and that after all, this estimable set of men are not received and cherished in the bosom of their own country. Is England so lost to gratitude, and all the feelings of humanity, as not to afford them an asylum?—Who can be so base as to think she will refuse it to them? Surely it cannot be that noble-minded man who would plunge his country again knee deep in blood, and saddle it with an expence of twenty millions for the purpose of restoring them. Without one drop of blood spilt, and without one fifth of the expence of one year's campaign, happiness and ease can be given to the loyalists in as ample a manner as these blessings were ever in their enjoyment: therefore let the outcry cease on this head." Ib. 70, 71.

Lord Hawke. "In America," said he, "Congress had engaged to recommend their [the loyalists] cause to the Legislatures of the Country: What other term could they adopt? He had searched the Journals of Congress on this subject: What other term did they, or do they ever adopt in their requisitions to the different provinces? It is an undertaking on the part of Congress: that body, like the king here, is the executive power in America. Can the Crown undertake for the two Houses of Parliament? It can only recommend. He flattered himself that recommendation would be attended with success; but, said he, state the case that it will not; the liberality of Great-Britain is still open to them. Ministers had pledged themselves to indemnify them; not only in the address now moved for, but even in the last address, and in the speech from the throne."

Lord Walsingham. "We had only the *recommendation* of Congress to trust to, and how often had their recommendations been fruitless? There were

were many cases in point in which provincial assemblies had peremptorily refused the recommendations of Congress. It was but the other day the states refused money on the recommendations of Congress. Rhode-Island unanimously refused when the Congress desired to be authorized to lay a duty of five per cent. because the funds had failed. Many other circumstances might be produced of the failure of the recommendations of Congress, and therefore we ought not, in negotiations for the loyalists, to have trusted to the recommendations of Congress. Nothing but the *repeal* of the acts existing against them ought to have sufficed, as nothing else could give effect to the treaty; *repeal* was not mentioned. They had only stipulated to revise and reconsider them." 11 Debrett's Parl. Reg. 44.

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Confiscation,

Lord Sackville. "The king's ministers had weakly imagined that the recommendation of Congress was a sufficient security for these unhappy men. For his own part, so far from believing that this would be sufficient, or any thing like sufficient, for their protection, he was of a direct contrary opinion: And if they entertained any notions of this sort, he would put an end to their idle hopes at once, by reading from a paper in his pocket, a resolution, which the assembly of Virginia had come to, so late as on the 17th of December last.—The resolution was as follows: "That all demands or requests of the British Court, for the restitution of property, confiscated by this state, being neither supported by law, equity, or policy, are wholly inadmissible: And that our delegates in Congress be instructed to move Congress, that they may direct their deputies who shall represent these States in the General Congress, for adjusting a peace or truce, neither to agree to any such restitution, or submit that the laws made by any independent State in this Union, be subjected to the adjudication of any power or powers on Earth." Ib. page 62, 63.

Some of the speakers seem to have had not very accurate ideas of our government. All of them however have perfectly understood, that a recommendation was a matter, not of obligation or coercion, but of persuasion and influence, merely. They appear to have entertained greater or less degrees of hope or doubt, as to its effect on the legislatures, and though willing to see the result of this chance, yet if it failed, they were prepared to take the work of indemnification on themselves.

S. 8. The agreement then, being only that Congress should recommend to the State Legislatures, a restitution of estates, and liberty to remain a twelvemonth for the purpose of soliciting the restitution, and to recommend a revision of all acts regarding the premises, Congress did immediately on the receipt of the definitive articles, to wit, on the 14th of January, 1784, come to the following resolution, viz. "Resolved unanimously, nine states being present, that it be and it is hereby earnestly recommended to the

Compliance
by Congress.

Legislatures

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tion.

Legislatures of the respective states, to provide for the restitution of all estates, rights, and properties, which have been confiscated, belonging to real British subjects: And also, of the estates, rights, and properties of persons resident in districts, which were in possession of his Britannic majesty's arms, at any time between the 30th day of November, 1782, and the 14th day of January, 1784, and who have not borne arms against the said United States; and that persons of any other description shall have free liberty to go to any part or parts of any of the thirteen United States, and therein to remain twelve months unmolested in their endeavours to obtain the restitution of such of their estates, rights and properties, as may have been confiscated: And it is also hereby earnestly recommended to the several States to reconsider and revise all their acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent not only with justice and equity, but with that spirit of conciliation which, on the return of the blessings of peace, should universally prevail: And it is hereby also earnestly recommended to the several States, that the estates, rights and properties of such last mentioned persons should be restored to them, they refunding to any persons who may be now in possession, the bona fide price (where any has been given) which such persons may have paid, on purchasing any of the said lands, rights, or properties, since the confiscation.

Ordered, That a copy of the proclamation of this date, together with the recommendation, be transmitted to the several States, by the Secretary."

S. 9. The British negociators had been told by ours, that all the States would refuse to comply with this recommendation: One only, however, refused altogether. The others complied in a greater or less degree, according to the circumstances and dispositions in which the events of the war had left them; but had all of them refused, it would have been no violation of the 5th article, but an exercise of that freedom of will, which was reserved to them, and so understood by all parties.

Acts of
States.

The following are the Acts of your Catalogue which belong to this head, with such short observations as are necessary to explain them. Beginning at that end of the Union where the war having raged most, we shall meet with the most repugnance to favour.

[B. 7.]
1783.

S. 10. *Georgia*. July 29. "An act releasing certain persons from their bargains. A law had been passed during the war, to wit, in 1782, [A. 30.] confiscating the estates of persons therein named and directing them to be sold:—they were sold; but some misunderstanding happened to prevail among the purchasers, as to the mode of payment. This Act of 1783, therefore, permits such persons to relinquish their bargains, and authorizes a new sale—the lands remaining confiscated under the law made previous to the peace.

February

February 22. An Act to authorise the Auditor to liquidate the demands of such persons as have claims against the confiscated estates. In the same law of confiscations made during the war, it had been provided that the estates confiscated should be subject to pay the debts of their former owner. This law of 1785 gave authority to the Auditor to settle with, and pay the creditors, and to sell the remaining part of the estate confiscated as before.

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tion.

[B. 4.]
1785.

February 10. An Act to compel the settlement of public accounts, for inflicting penalties, and vesting the Auditor with certain powers. This law also is founded on the same confiscation law of 1782, requiring the Auditor to press the settlement with the creditors, &c.

[B. 8.]
1787.

February 7. An Act for ascertaining the rights of aliens, and pointing out the mode for the admission of citizens. It first describes what persons shall be free to become citizens, and then declares none shall be capable of that character who had been named in any confiscation law, or banished, or had borne arms against them. This act does not prohibit either the refugees, or real British subjects from coming into the state to pursue their lawful affairs. It only excludes the former from their right of citizenship, and it is to be observed, that this recommendatory article does not say a word about giving them a right to become citizens. If the conduct of Georgia should appear to have been peculiarly uncomplying, it must be remembered that that state had peculiarly suffered; that the British army had entirely overrun it; had held possession of it for some years; and that all the inhabitants had been obliged either to abandon their estates and fly their country, or to remain in it under a military government.

[C. 3.]
1785.

S. 11. *South-Carolina*. August 15th. An Act to vest 180 acres of land, late the property of James Holmes, in certain persons, in trust for the benefit of a public school. These lands had been confiscated and sold during the war. The present law prescribes certain proceedings as to the purchasers, and provides for paying the debts of the former proprietors.

[A. 31.]
1783.

March 22. An Act to amend the Confiscation Act, and for other purposes therein mentioned. This relates only to estates which had been confiscated before the peace. It make some provision towards a final settlement, and relieves a number of persons from the amercements which had been imposed on them during the war, for the part they had taken.

[B. 6.]
1786.

March 26. An Act restoring to certain persons their estates, and permitting the said persons to return, and for other purposes. This Act recites, that certain estates had been confiscated, and the owners 124 in number banished by former laws; that Congress had earnestly recommended in the terms of the treaty: it therefore distributes them into three lists or classes, restoring to all of them the lands themselves where they remained.

[C. 9.]
1784.

Exile and
Confisca-
tion.

unfold, and the price, where sold, requiring from those in lists No. 1 & 3, to pay 12 per cent. on the value of what was restored, and No. 2, nothing; and it permits all of them to return, only disqualifying those of No. 1 and 3, who had borne military commissions against them, from holding any office for seven years.

Document,
No. 44.

Governor Moultrie's letter of June 21, 1786, informs us, that most of the confiscations had been restored; that the value of those not restored, was far less than that of the property of their citizens carried off by the British; and that fifteen, instead of twelve months had been allowed to the persons for whom permission was recommended to come and solicit restitution.

[B. 3.]
1784.

S. 12. *North Carolina*. October. An Act directing the sale of confiscated property.

[B. 2.]
1785.

December 29. An Act to secure and quiet in their possessions, the purchasers of lands, goods, &c. sold, or to be sold by the commissioners of forfeited estates. These two Acts relate expressly to property "heretofore confiscated," and secure purchasers under those former confiscations.

No. 54.
[D. 11.]
1790.

The case of Bayard *v.* Singleton, adjudged in a Court of Judicature in North Carolina. Bayard was a purchaser of part of an estate confiscated during the war, and the Court adjudged his title valid; and it is difficult to conceive on what principle that adjudication can be complained of as an infraction of the treaty.

1785.

November 19. An Act was passed to restore a confiscated estate to the former proprietor, Edward Bridgen.

[C. 7.]
1784.

October. An Act to describe and ascertain such persons as owed allegiance to the State, and impose certain disqualifications on certain persons therein named.

[C. 8.]
1785.

November. An Act to amend the preceding Act.

[C. 1.]
1788.

April. An Act of pardon and oblivion. The two first of these Acts exercised the right of the State, to describe who should be its citizens, and who should be disqualified from holding offices. The last, entitled An Act of pardon and oblivion, I have not been able to see; but so far as it pardons, it is a compliance with the recommendation of Congress under the treaty, and so far as it excepts persons out of the pardon, it is a refusal to comply with the recommendation, which it had a right to do. It does not appear, that there has been any obstruction to the return of those persons who had claims to prosecute.

Document,
No. 13.

S. 13. *Virginia*. The catalogue under examination presents no Act of this state subsequent to the treaty of peace, on the subject of confiscations. By one of October 18, 1784, they declared there should be no future confiscations. But they did not choose to comply with the recommendation of Congress,

grievs, as to the restoration of property which had been already confiscated : with respect to persons, the first assembly which met after the peace, passed

October. The Act prohibiting the migration of certain persons to this commonwealth, and for other purposes therein mentioned, which was afterwards amended by

October. An Act to explain and amend the preceding. These Acts, after declaring who shall not have a right to migrate to, or become citizens of the State, have each an express proviso, that *nothing contained in them shall be so construed as to contravene the treaty of peace with Great Britain*; and a great number of the refugees having come into the State, under the protection of the first law, and it being understood, that a party was forming in the State to ill-treat them, the governor, July 26, 1784, published the proclamation, No. 14, enjoining all magistrates and other civil officers, to protect them, and secure to them the rights derived from the treaty, and acts of assembly aforesaid, and to bring to punishment, all who should offend herein; in consequence of which, those persons remained quietly in the State, and many of them have remained to this day.

S. 14. *Maryland*. November. An Act to vest certain powers in the governor and council. Sec. 3.

November. An Act to empower the governor and council to compound with the discoverers of British property, and for other purposes. These Acts relate purely to property which had been confiscated during the war, and the state not choosing to restore it, as recommended by congress, passed them for bringing to a conclusion the settlement of all transactions relative to the confiscated property.

I do not find any law of this state, which could prohibit the free return of their refugees, or the reception of the subjects of Great Britain, or of any other country. And I find that they passed in

November. An Act to repeal that part of the Act for the security of their government, which disqualified non-jurors from holding offices, and voting at elections.

The case of Harrison's representatives, in the court of chancery of Maryland, is in the list of infractions. These representatives being British subjects, and the laws of this country, like those of England, not permitting aliens to hold lands, the question was, whether British subjects were aliens. They decided that they were; consequently that they could not take lands, and consequently also, that the lands in this case escheated to the state. Whereupon the legislature immediately interposed, and passed a special Act, allowing the benefits of the succession to the representatives. But had they not relieved them, the case would not have come under the treaty; for there is no stipulation in that doing away the laws of alienage,

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tion.

[C. 5.]
1783.

[C. 6.]
1786.

Document,
No. 14.

[B. 9.]
1785.

[B. 10.]
1788.

[1786.]

[D. 11.]
1790. 3

See Docu-
ment,
No. 49.

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tion.

and enabling the members of each nation to inherit or hold lands in the other.

Document,
No. 15.

S. 15. *Delaware*. This State, in the year 1778, passed an Act of confiscation against forty-six citizens by name, who had joined in arms against them, unless they should come in by a given day, and stand their trial. The estates of those who did not, were sold, and the whole business soon closed. They never passed any other Act on the subject, either before or after the peace. There was no restitution, because there was nothing to restore, their debts having more than exhausted the proceeds of the sales of their property, as appears by Mr. Read's letter, and that all persons were permitted to return, and such as chose it have remained there in quiet to this day.

[C. 15.]
1790.

S. 16. *Pennsylvania*. The catalogue furnishes no transaction of this State, subsequent to the arrival of the treaty of peace, on the subjects of confiscation, except August. An order of the executive council, to sell part of Harry Gordon's real estate, under the Act of January 31, 1783. This person had been summoned by proclamation, by the name of Henry Gordon, to appear before the 1st day of November, 1781, and failing, his estate was seized by the commissioners of forfeitures, and most of it sold. The Act of 1783, January 31, cured the misnomer, and directed what remained of his estate, to be sold. The confiscation being complete, it was for them to say whether they would restore it, in compliance with the recommendation of Congress. They did not, and the executive completed the sale, as they were bound to do. All persons were permitted to return to this State, and you see many of them living here to this day in quiet and esteem.

[A. 33.]
1783.

S. 17. *New Jersey*. The only act alleged against this State, as to the recommendatory article, is,

December 23. An Act to appropriate a certain forfeited estate. This was the estate of John Zabriski, which had been forfeited during the war, and the Act gives it to major general Baron Stuben, in reward for his services. The confiscation being complete, the legislature were free to do this. Governor Livingston's letter is an additional testimony of the moderation of this State, after the proclamation of peace, and from that we have a right to conclude, that no persons were prevented from returning and remaining indefinitely.

Document,
No. 41.

S. 18. *New York*. This State had been among the first invaded; the greatest part of it had been possessed by the enemy through the war; it was the last evacuated; its inhabitants had in great numbers been driven off their farms; their property wasted, and themselves living in exile and penury, and reduced from affluence to want, it is not to be wondered at, if

if their sensations were among the most lively: accordingly, they, in the very first moment, gave a flat refusal to the recommendation, as to the restoration of property. See Document No. 17, containing their reasons. They passed, however, May 12, The Act to preserve the freedom and independence of this State, and for other purposes therein mentioned, in which, after disqualifying refugees from offices, they permit them to come, and remain as long as may be absolutely necessary, to defend their estates.

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Confiscation.

Document,
No. 17.
[C. 4.]
1784.

S. 19. *Connecticut*. A single Act only on the same subject, is alleged against this State, after the treaty of peace: This was an Act directing certain confiscated estates to be sold. The title shews, they were old confiscations, not new ones, and governor Huntington's letter informs us, that all confiscations and prosecutions were stopped on the peace; that some restoration of property took place, and all persons were free to return.

[A. 5.]
1790.
Document,
No. 18.

S. 20. *Rhode Island*. The titles of four Acts of this State are cited in your Appendix, to wit:

May 27. An Act to send out of the State, N. Spink, and I. Underwood, who had formerly joined the enemy, and were returned to Rhode-Island.

[C. 11.]
1783.

June 8. An Act to send William Young, theretofore banished out of the State, and forbidden to return at his peril.

[C. 12.]
1783.

June 12. An Act allowing William Brenton, late an absentee, to visit his family for one week, then sent away not to return.

[C. 13.]
1783.

October. An Act to banish S. Knowles (whose estate had been forfeited) on pain of death, if he return. Mr. Channing, the attorney of the United States for that district, says in his letter, "he had sent me all the acts of that legislature, that affect either the debts, or the persons of British subjects, or American refugees." The acts above cited are not among them. In the answer of April 6th, which you were pleased to give to mine of March 30th, desiring copies of these, among other papers, you say the book is no longer in your possession. These circumstances will, I hope, excuse my not answering or admitting these acts, and justify my proceeding to observe, that nothing is produced against this state, on this subject, after the treaty; and the district attorney's letter before cited informs us, that their courts considered the treaty as paramount the laws of the state, and decided accordingly, both as to persons and property, and that the estates of all British subjects seized by the state, had been restored, and the rents and profits accounted for. Governor Collins's letter, No. 20, is a further evidence of the compliance of this state.

[C. 14.]
1783.
Doc. No.
19.

No. 20.

S. 21. *Massachusetts*. March 24. This state passed an act for repealing two laws of this state, and for asserting the right of this free and sovereign commonwealth to expel such aliens as may be dangerous to the peace and good

[C. 2.]
1784.

Exile and
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tion.

good order of government, the effect of which was to reject the recommendation of Congress, as to the return of persons, but to restore to them such of their lands as were not confiscated, unless they were pledged for debt, and by

[B. r.]
1784.

Novem. 10. An act in addition to an act for repealing two laws of this state, they allowed them to redeem their lands pledged for debt, by paying the debt.

S. 22. *New-Hampshire.* Against New-Hampshire nothing is alleged; that state having not been invaded at all, was not induced to exercise any acts of rigour against the subjects or adherents of their enemies.

The acts then, which have been complained of, as violations of the Vth article, were such as the states were free to pass, notwithstanding the recommendation, such as it was well understood they would be free to pass without any imputation of infraction, and may therefore be put entirely out of question.

Future
Confisca-
tions.

S. 23. And we may further observe, with respect to the same acts, that they have been considered as infractions not only of the Vth article, which recommended the restoration of the confiscations which *had taken place during the war*; but also, of that part of the VIth article which forbade *future* confiscations; but not one of them touched an estate which had not been before confiscated; for you will observe,* that an act of the legislature confiscating lands, stands in place of *an office found* in ordinary cases; and that *on the passage of the act*, as *on the finding of the office*, the state stands ipso facto possessed of the lands, without a formal entry. The confiscation then is complete by the passage of the act. Both the title and possession being divested out of the former proprietor, and vested in the state, no subsequent proceedings relative to the lands, are acts of confiscation, but are mere exercises of ownership, whether by levying profits, conveying for a time, by lease, or in perpetuo, by an absolute deed. I believe therefore, it may be said with truth, that there was not a single confiscation made in any one of the United States, after notification of the treaty; and consequently, it will not be necessary to notice again this part of the 6th article.

* 3 Black-
stone, 260.

Citizenship
of Refugees.

S. 24. Before quitting the recommendatory article, two passages in the letter are to be noted, which applying to all the states in general, could not have been properly answered under any one of them in particular. In page 16, is the following passage: "The express provision in the treaty, for the restitution of the estates and properties of persons of both these descriptions [British subjects and Americans who had staid within the British lines, but had not borne arms,] certainly comprehended a virtual acquiescence in their right to reside where their property was situated, and to be restored to the privileges of citizenship." Here seems to be a double

error:

error: First, in supposing an express provision, whereas the words of the article, and the collateral testimony adduced, have shewn that the provision was neither *express*, nor meant to be so. And secondly, in inferring from a restitution of the estate, a virtual acquiescence in the right of the party to reside where the estate is. Nothing is more frequent, than for a sovereign to banish the person, and leave him possessed of his estate. The inference in the present case too, is contradicted, as to the *refugees*, by the recommendation to permit their residence twelve months; and as to British subjects, by the silence of the article, and the improbability that the British plenipotentiary meant to stipulate a right for British subjects to emigrate and become members of another community.

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tion.

S. 25. Again, in page 34. it is said, "The nation of Great-Britain has been involved in the payment to them of no less a sum than four millions sterling, as a partial compensation for the losses they had sustained." It has been before proved, that Mr. Oswald understood perfectly, that no indemnification was claimed from us; that on the contrary we had a counter claim of indemnification to much larger amount: It has been supposed, and not without grounds, that the glimmering of hope provided by the recommendatory article, was to quiet, for the present, the clamours of the sufferers, and to keep their weight out of the scale of opposition to the peace, trusting to time and events, for an oblivion of these claims, or a gradual ripening of the public mind to meet and satisfy them, at a moment of less embarrassment: the latter is the turn which the thing took. The claimants continued their importunities, and the government determined at length to indemnify them for their losses; and, open-handedly as they went to work, it cost them less than to have settled with us, the just account of mutual indemnification, urged by our commissioners. It may be well doubted, whether there were not single states of our Union, to which the four millions you have paid, would have been no indemnification for the losses of property sustained contrary even to the laws of war: and what sum would have indemnified the whole thirteen, and consequently to what sum our whole losses of this description have amounted, would be difficult to say. However, though in no wise interested in the sums you thought proper to give to the refugees, we could not be inattentive to the measure in which they were dealt out. Those who were on the spot, and who knew intimately the state of affairs with the individuals of this description, who knew that their debts often exceeded their possessions, inasmuch that the most faithful administration made them pay but a few shillings in the pound, heard with wonder of the sums given, and could not but conclude, that those largesses were meant for something more than loss of property: that services, and other circumstances must have had great influence.

Indemnifi-
cation by
Great-Bri-
tain.

Exile and
Confisca-
tion.

fluence. The sum paid is therefore no imputation on us. We have borne our own losses. We have even lessened yours, by numerous restitutions, where circumstances admitted them; and we have much the worst of the bargain, by the alternative you chose to accept, of indemnifying your own sufferers, rather than ours.

Debts,
British pro-
ceedings.

S. 26. II. The article of debts is next in order: but to place on their true grounds our proceedings relative to them, it will be necessary to take a view of the British proceedings, which are the subject of complaint in my letter of December 15th.

Negroes.

In the 7th article, it was stipulated, that his Britannic majesty should withdraw his armies, garrisons and fleets, without carrying away any negroes, or other property of the American inhabitants. This stipulation was known to the British commanding officers, before the 19th of March 1783, as *provisionally* agreed, and on the 5th of April, they received official notice from their court of the conclusion and ratification of the preliminary articles between France, Spain, and Great-Britain, which gave activity to ours, as appears by the letter of Sir Guy Carleton to Gen. Washington dated April 6, 1783. [Document, No. 21.] From this time then, surely no negroes could be carried away without a violation of the treaty. Yet we find that so early as the 6th May, a *large* number of them had already been embarked for Nova-Scotia, of which, as contrary to an express stipulation in the treaty, Gen. Washington declared to him his sense and his surprise. In the letter of Sir Guy Carleton of May 12, (annexed to mine to you of the 15th of December) he admits the fact, palliates it by saying he had no right to deprive the negroes of that liberty he found them *possessed* of, that it was unfriendly to suppose that the king's minister could stipulate to be guilty of a notorious breach of the public faith towards the negroes, and that *if it was his intention, it must be adjusted by compensation*, restoration being utterly impracticable, where inseparable from a breach of public faith. But surely, Sir, an officer of the king is not to question the validity of the king's engagements, nor violate his solemn treaties, on his own scruples about the public faith. Under this pretext, however, general Carleton went on in daily infractions, embarking, from time to time, between his notice of the treaty, the 5th of April, and the evacuation of New-York, Nov. 25—3000 negroes, of whom our Commissioners had inspection, and a very large number more, in public and private vessels, of whom they were not permitted to have inspection. Here, then, was a direct, unequivocal, and avowed violation of this part of the 7th article, in the first moments of its being known; an article, which had been of extreme solicitude on our part; on the fulfilment of which depended the means of paying debts, in proportion to the number of labourers withdrawn; and when in the very act of violation, we warn, and put the commanding officer

No. 21.

on his guard, he says, directly, he will go through with the act, and leave it to his court to adjust it by compensation.

S. 27. By the same article, his Britannic majesty stipulates, that he will, *with all convenient speed*, withdraw his garrisons from every post within the United States. "When no precise term, says a writer on the law of nations, [Vattel, l. 4. c. 26.] has been marked for the accomplishment of a treaty, and for the execution of each of its articles, good sense determines that every point should be executed *as soon as possible*: This is, without doubt, what was understood." The term in the treaty, *with all convenient speed*, amounts to the same thing, and clearly excludes all unnecessary delay. The general pacification being signed on the 20th of Jan. some time would be requisite for the orders for evacuation to come over to America, for the removal of stores, property and persons, and finally, for the act of evacuation. The larger the post, the longer the time necessary to remove all its contents; the smaller, the sooner done: Hence, though general Carleton received his orders to evacuate New-York, in the month of April, the evacuation was not completed till late in November. 'It had been the principal place of arms and stores; the seat, as it were, of their general government, and the asylum of those who had fled to them. A great quantity of shipping was necessary, therefore, for the removal, and the General was obliged to call for a part from foreign countries. These causes of delay were duly respected on our part. But the posts of * Michillimackinac, Detroit, Niagara, Oswego, Oswegatchie, Point-au-Fer, Dutchman's Point, were not of this magnitude. The orders for evacuation, which reached general Carleton, in New-York, early in April, might have gone, in one month more, to the most remote of these posts: Some of them might have been evacuated in a few days after, and the largest in a few weeks. Certainly they might all have been delivered, without any *inconvenient speed* in the operations, by the end of May, from the known facility furnished by the lakes, and the water connecting them; or by crossing immediately over into their own territory, and availing themselves of the season for making new establishments there, if that was intended: Or whatever time might, in event, have been necessary for their evacuation, certainly the order for it should have been given from England, and might have been given as early as that from New-York. Was any order ever given? Would not an *unnecessary delay* of the order, producing an equal delay in the evacuation, be an infraction of the treaty? Let us investigate this matter.

On the 3d of Aug. 1783, major-general baron Steuben, by orders from general Washington, having repaired to Canada for this purpose, wrote the letter, No. 22, to general Haldimand, governor of the province, and received from him the answer of Aug. 13, No. 23. Wherein he says, 'The

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ceedings.

Posts.

' Lorsqu'on n'a point marqué de terme pour l'accomplissement du traité, et pour l'exécution de chacun des articles, le bon sens dit que chaque point doit être exécuté *aussitôt qu'il est possible*. C'est sans doute ainsi qu'on a l'entendu.'

* Instead of this, Fort-Erie was, by error, inserted in my letter of Dec. 15.

No. 22.

No. 23.

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ceedings.

No. 24.

orders I have received, direct a discontinuance of every hostile measure only,' &c. And in his conference with baron Steuben, he says expressly, 'That he *had not received any orders* for making the least arrangement for the evacuation of a single post.' The orders then, which might have been with him by the last of April, were unknown, if they existed, the middle of August—See Baron Steuben's letter, No. 24.

No. 25.

Again, on the 19 of March, 1784, gov. Clinton, of New-York, within the limits of which state some of these posts are, writes to general Haldimand the letter No. 25; and that general, answering him, May 10, from Quebec, says, 'Not having had the honour to *receive orders* and instructions relative to withdrawing the garrisons,' &c. Fourteen months were now elapsed, and the *orders not yet received*, which might have been received in four.

No. 27.

No. 28.

Again, on the 12 of July, col. Hull, by order from general Knox, the Secretary at War, writes to general Haldimand the letter No. 27; and general Haldimand gives the answer of the 13, No. 28, wherein he says, 'Though I am now informed, by his majesty's ministers, of the ratification, &c. I remain, &c. *not having received any orders* to evacuate the posts which are without the limits,' &c. And this is eighteen months after the signature of the general pacification! Now, is it not fair to conclude, if the order was not arrived on the 13 of Aug. 1783, if it was not arrived on the 10 of May, 1784, nor yet on the 13 of July, in the same year, that, in truth, the order had never been given? And if it had never been given, may we not conclude, that it never had been intended to be given? From what moment is it we are to date this infraction? From that, at which, with convenient speed, the order to evacuate the upper posts might have been given. No legitimate reason can be assigned, why that order might not have been given as early, and at the same time as the order to evacuate New-York; and *all delay, after this, was in contravention of the treaty.*

S. 28. Was this delay merely innocent and unimportant as to us, setting aside all considerations but of interest and safety? 1. It cut us off from the fur-trade, which, before the war, had been always of great importance as a branch of commerce, and as a source of remittance for the payment of our debts to Great-Britain: for to the injury of withholding our posts, they added the obstruction of all passage along the lakes and their communications. 2. It secluded us from connection with the north-western Indians, from all opportunity of keeping up with them friendly and neighbourly intercourse, brought on us consequently, from their known dispositions, constant and expensive war, in which numbers of men, women and children have been, and still are daily falling victims to the scalping knife, and to which there will be no period, but in our possession of the posts which command their country.

It may safely be said then that the treaty was violated in England, before it was known in America, and in America, as soon as it was known, and that too in points so essential as that without them, it would never have been concluded.

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ceedings.

S. 29. And what was the effect of these infractions on the American mind? On the breach of any article of a treaty by the one party, the other has its election to declare it dissolved in all its articles, or to compensate itself by withholding execution of equivalent articles; or to wave notice of the breach altogether.

Congress being informed that the British commanding officer was carrying away the negroes from New-York, in avowed violation of the treaty, and against the repeated remonstrances of Gen. Washington, they take up the subject on the 26th of May, 1783; they declare that it is contrary to the treaty; direct that the proper papers be sent to their ministers plenipotentiary in Europe to remonstrate, and demand reparation, and that, in the mean time, General Washington continue his remonstrances to the British commanding officer, and insist on the discontinuance of the measure. [See document No. 29.]

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No. 29.

S. 30. The state of Virginia, materially affected by this infraction,* because the labourers thus carried away were chiefly from thence; while heavy debts were now to be paid to the very nation which was depriving them of the means, took up the subject in Dec. 1783, that is to say, seven months after that particular infraction, and four months after the first refusal to deliver up the posts, and instead of arresting the debts absolutely, in reprisal, for their negroes carried away, they passed [D. 5.] the act to revive and continue the several acts for suspending the issuing executions on certain judgments until December 1783; that is to say, they revived till their next meeting two acts passed during the war, which suspended all *voluntary* and *fraudulent* assignments of debt, and as to *others*, allowed real and personal estate to be tendered in discharge of executions: the effect of which was to relieve the body of the debtor from prison, by authorizing him to deliver property in discharge of the debt. In June following, thirteen months after the violation last mentioned, and after a second refusal, by the British commanding officer, to deliver up the posts, they came to the resolution No. 30, reciting specially the infraction respecting their negroes, instructing their delegates in Congress to press for reparation; and resolving, that the courts shall be open to British suits as soon as *reparation shall be made*, or otherwise, *as soon as Congress shall judge it indispensably necessary*. And in 1787, they passed [C. 7.] the act to repeal so much of all and every act or acts of assembly as prohibits the recovery of British debts; and at the same time [E. 6.] the act to repeal part of

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an act for the protection and encouragement of the commerce of nations acknowledging the independence of the United States of America. The former was not to be in force till the evacuation of the posts, and reparation for the negroes carried away. The latter requires particular explanation. The small supplies of European goods which reached us during the war, were frequently brought by captains of vessels and supercargoes, who, as soon as they had sold their goods, were to return to Europe with their vessels. To persons under such circumstances, it was necessary to give a summary remedy for the recovery of the proceeds of their sale. This had been done by the law for the protection and encouragement of the commerce of nations acknowledging the independence of the United States, which was meant but as a temporary thing, to continue whilst the same circumstances continued: On the return of peace, the supplies of foreign goods were made, as before the war, by merchants resident here. There was no longer reason to continue to them the summary remedy which had been provided for the transient vender of goods: And indeed it would have been unequal to have given the resident merchant instantaneous judgment against a farmer or tradesman, while the farmer or tradesman could pursue those who owed him money but in the ordinary way, and with the ordinary delays. The British creditor had no such unequal privilege, while we were under British government, and had no title to it in justice, or by the treaty, after the war. When the legislature proceeded then to repeal the law as to other nations, it would have been extraordinary to have continued it for Great-Britain.

S. 31. South Carolina was the second state which moved, in consequence of the British infractions, urged thereto by the desolated condition in which their armies had left that country, by the debts they owed, and the almost entire destruction of the means of paying them. They passed [D. 7. 20.] 1784, Mar. 26, an ordinance respecting the recovery of debts, suspending the recovery of all actions, as well American as British, for nine months, and then allowing them to recover payment at four equal and annual instalments only, requiring the debtor, in the mean time, to give good security for his debt, or otherwise refusing him the benefit of the act—by

[D. 21.] 1787, Mar. 28. An Act to regulate the recovery and payment of debts, and prohibiting the importation of negroes, they extended the instalments a year further in a very few cases. I have not been able to procure the two following acts [D. 14.] 1785, Oct. 12, An Act for regulating sales under executions, and for other purposes therein mentioned, and

[D. 22.] 1788, Nov. 4. An Act to regulate the payment and recovery
of

of debts, and to prohibit the importation of negroes for the time therein limited; and I know nothing of their effect, or their existence, but from your letter, which says, their effect was to deliver property in execution, in relief of the body of the debtor, and still further to postpone the instalments. If, during the existence of material infractions on the part of Great Britain, it were necessary to apologize for these modifications of the proceedings of the debtor, grounds might be found in the peculiar distresses of that state, and the liberality with which they had complied with the recommendatory articles, notwithstanding their sufferings might have inspired other dispositions, having pardoned every body, received every body, restored all confiscated lands not sold, and the prices of those sold.

S. 32. Rhode-Island next acted on the British infractions, and imposed modifications in favour of such debtors as should be pursued by their creditors, permitting them to relieve their bodies from execution, by the payment of paper-money, or delivery of property. This was the effect of [D. 12.] 1786, Mar. An Act to enable any debtor in jail, on execution at the suit of any creditor, to tender real or certain specific articles of personal estate, and

[D. 16.] 1786, May, An Act making paper money a legal tender. But observe, that this was not till *three years* after the infractions by Great-Britain, and repeated and constant refusals of compliance on their part.

S. 33. New Jersey did the same thing, by

[D. 13.] 1786, Mar. 23, An Act to direct the modes of proceedings on writs of fieri facias, and for transferring lands and chattels for payment of debts, and

[D. 18.] 1786, May 26, An Act for striking, and making current, £. 100,000 in bills of credit, to be let out on loan, and

[D. 17.] 1786, June 1, An Act for making bills emitted by the Act for raising a revenue of £. 31,259; 5s per annum, for 25 years, a legal tender, and

S. 34. Georgia, by [D. 19.] 1786, Aug. 14, An Act for emitting the sum of £. 50,000 in bills of credit, and for establishing a fund for the redemption, and for other purposes therein mentioned, made paper money also a legal tender.

These are the only states which appear, by the acts cited in your letter, to have modified the recovery of debts. But I believe that North Carolina also emitted a sum of paper money, and made it a tender in discharge of executions; though, not having seen the act, I cannot affirm it with certainty. I have not mentioned, because I do not view the act of Maryland

[D. 15.] 1786, Nov. C. 29, for the settlement of public accounts, &c. as
a modi-

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a modification of the recovery of debts. It obliged the British subject, before he could recover what was due to him within the state, to give bond for the payment of what he owed therein. It is reasonable that every one who asks justice should do justice; and it is usual to consider the property of a foreigner, in any country, as a fund appropriated to the payment of what he owes in that country, exclusively. It is a care which most nations take of their own citizens, not to let the property which is to answer their demands, be withdrawn from its jurisdiction, and send them to seek it in foreign countries, and before foreign tribunals.

Instalments.

S. 35. With respect to the obstacles thus opposed to the British creditor, besides their general justification, as being produced by the previous infractions on the part of Great-Britain, each of them admits of a special apology. They are, 1st. Delay of judgment. 2d. Liberating the body from execution, on the delivery of property. 3d. Admitting executions to be discharged in paper money. As to the 1st, let it be considered, that from the nature of the commerce carried on between these states and Great Britain, they were generally kept in debt; that a great part of the country, and most particularly Georgia, South Carolina, North Carolina, Virginia, New-York and Rhode-Island, had been ravaged by an enemy, moveable property carried off, houses burnt, lands abandoned, the proprietors forced off into exile and poverty. When the peace permitted them to return again to their lands, naked and desolate as they were, was instant payment practicable? The contrary was so palpable that the British creditors themselves were sensible that, were they to rush to judgment immediately against their debtors, it would involve the debtor in total ruin, without relieving the creditor. It is a fact, for which we may appeal to the knowledge of one member, at least, of the British administration of 1783, that the chairman of the North American merchants, conferring on behalf of those merchants with the American ministers then in London, was so sensible that time was necessary, as well to save the creditor as debtor; that he declared, there would not be a moment's hesitation, on the part of the creditors, to allow payment by instalments annually for seven years; and that this arrangement was not made, was neither his fault nor ours.

To the necessities for some delay in the payment of debts may be added, the British commercial regulations lessening our means of payment, by prohibiting us from carrying in our own bottoms our own produce to their dominions in our neighbourhood, and excluding valuable branches of it from their home markets by prohibitory duties. The means of payment constitute one of the motives to purchase, at the moment of purchasing. If these means are taken away by the creditor himself, he ought

not in conscience to complain of a mere retardation of his debt, which is the effect of his own act, and the least injurious of those it is capable of producing. The instalment acts before enumerated have been much less general, and for a shorter term, than what the chairman of the American merchants thought reasonable. Most of them required the debtor to give security, in the mean time, to his creditor, and provided complete indemnification of the delay, by the payment of interest, which was enjoined in every case.

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ceedings.

S. 36. The second species of obstacle was the admitting the debtor to relieve his body from imprisonment by the delivery of lands or goods to his creditor. And is this idea original, and peculiar to us? or whence have we taken it? From England, from Europe, from natural right and reason. For it may be safely affirmed, that neither natural right nor reason subjects the body of a man to restraint for debt. It is one of the abuses introduced by commerce and credit, and which even the most commercial nations have been obliged to relax in certain cases. The Roman laws, the principles of which are the nearest to natural reason of those of any municipal code hitherto known, allowed imprisonment of the body in criminal cases only, or those wherein the party had expressly submitted himself to it.—The French laws allow it only in criminal or commercial cases.—The laws of England, in certain descriptions of cases (as bankruptcy), release the body. Many of the United States do the same, in all cases, on a cession of property by the debtor. The *levari facias*, an execution affecting only the *profits of lands*, is the only one allowed in England, in certain cases. The *elegit*, another execution of that and this country, attaches first on a man's chattels, which are not to be sold, but to be *delivered to the plaintiff*, on a *reasonable appraisement*, in part of satisfaction for his debt, and, if not sufficient, one half only of his lands are then to be delivered to the plaintiff, till the *profits* shall have satisfied him. The tender laws of these States were generally more favourable than the execution by *elegit*, because they not only gave, as that does, the whole property in chattels, but also *the whole property in the lands*, and not merely the *profits* of them. It is, therefore, an execution framed on the model of the English *elegit*, or rather an amendment of that writ, taking away, indeed, the election of the party against the *body* of his debtor, but giving him, in exchange for it, much more complete remedy against his *lands*. Let it be observed too, that this proceeding was allowed against citizens, as well as foreigners; and it may be questioned, whether the treaty is not satisfied, while the same measure is dealt out to British subjects, as to foreigners

Executions
paid off in
property.

Debts.
Am. pro-
ceedings.

Executions
paid in pa-
per money.

foreigners of all other nations, and to natives themselves. For it would seem, that all that a friend can expect, is to be treated as a native citizen.

S. 37. The third obstacle was allowing paper money to be paid for goods sold under execution. The complaint on this head is only against Georgia, South Carolina, Jersey and Rhode-Island : and this obstruction, like the two others, sprung out of the peculiar nature of the war. For those will form very false conclusions who reason, as to this war, from the circumstances which have attended other wars, and other nations. When any nation of Europe is attacked by another, it has neighbours, with whom its accustomed commerce goes on without interruption ; and its commerce with more distant nations is carried on by sea, in foreign bottoms, at least, under protection of the laws of neutrality. The produce of its soil can be exchanged for money, as usual, and the stock of that medium of circulation is not at all diminished by war ; so that property sells as readily and as well, for real money, at the close as at the commencement of the war. But how different was our case ! On the north and south were our enemies ; on the west, deserts inhabited by savages in league with them ; on the east, an ocean of 1000 leagues, beyond which, indeed, were nations who might have purchased the produce of our soil, and have given us real money in exchange, and thus kept up our stock of money, but who were deterred from coming to us by threats of war on the part of our enemies, if they should presume to consider us as a people entitled to partake the benefit of that law of war which allows commerce with neutral nations. What were the consequences ? The stock of hard money, which we possessed in an ample degree, at the beginning of the war, soon flowed into Europe for supplies of arms, ammunition and other necessaries, which we were not in the habit of manufacturing for ourselves. The produce of our soil, attempted to be carried in our own bottoms to Europe, fell, two thirds of it, into the hands of our enemies, who were masters of the sea ; the other third illly sufficed to procure the necessary implements of war, so that no returns of money supplied the place of that which had gone off. We were reduced then to the resource of a paper medium, and that completed the exile of the hard money : so that, in the latter stages of the war, we were, for years together, without seeing a single coin of the precious metals in circulation. It was closed with a stipulation that we should pay a large mass of debt in such coin. If the whole soil of the United States had been offered for sale for ready coin, it would not have raised as much as would have satisfied this stipulation. The thing then was impossible, and reason and authority

declare,

declare, * "Si l'empêchement est réel, il faut donner du tems; car nul n'est tenu à l'impossible." Vattel, l. 4. §. 51.—We should with confidence have referred the case to the arbiter proposed by another jurist, who lays it down, that a party, † "Non ultra obligari, quam in quantum facere potest; et an possit, permittendum alterius principis, qua boni viri arbitrio." Bynk. 2. J. P. l. 2. c. 10, §. quid. That four of the states should resort, under such circumstances, to very small emissions of paper-money, is not wonderful: that all did not, proves their firmness under sufferance, and that they were disposed to bear whatever could be borne, rather than contravene, even by way of equivalent, stipulations which had been authoritatively entered into by them. And even in the four states which emitted paper money, it was in such small sums, and so secured, as to suffer only a short-lived, and not great depreciation of value; nor did they continue its quality as a tender, after the first paroxysms of distress were over. Here, too, it is to be observed, that natives were to receive this species of payment equally with British subjects.

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So that, when it is considered, that the other party had broken the treaty from the beginning, and that too in points which lessened our ability to pay their debts, it was a proof of the moderation of our nation, to make no other use of the opportunity of retaliation presented to them, than to indulge the debtors with that time for discharging their debts which their distresses called for, and the interests and the reason of their creditors approved.

S. 38. It is to be observed, that during all this time, Congress, who alone possessed the power of peace and war, of making treaties, and, consequently, of declaring their infractions, had abstained from every public declaration, and had confined itself to the resolution of May 26th, 1783, and to repeated efforts through their minister plenipotentiary at the court of London, to lead that court into a compliance on their part, and reparation of the breach they had committed. But the other party now laid hold of those very proceedings of our states, which their previous infractions had produced, as a ground for further refusal, and inverting the natural order of cause and effect, alleged that these proceedings of ours were the causes of the infractions, which they had committed months and years before. Thus the British minister for foreign affairs, in his answer of February

Interposition of Congress.

* "If the obstacle be real, time must be given, for no one is bound to an impossibility." Vattel, l. 4. §. 51.

† "No one is bound beyond what he can do, and whether he can, may be left to the decision of the other prince, as an honest man." Bynk. 2. J. P. l. 2. c. 10.

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tion of Con-
gress.

28th, 1786, to Mr. Adams' memorial, says, "The engagements entered into by treaty ought to be mutual, and equally binding on the respective contracting parties. It would, therefore, be the height of folly, as well as injustice, to suppose one party alone obliged to a strict observance of the public faith, while the other might remain free to deviate from its own engagements, as often as convenience might render such deviation necessary, though at the expence of its own national credit and importance. I flatter myself, however, sir, that justice will speedily be done to British creditors; and I can assure you, sir, that whenever America shall manifest a real intention to fulfil her part of the treaty, Great-Britain will not hesitate to prove her sincerity to co-operate in whatever points depend upon her, for carrying every article of it into real and complete effect." Facts will furnish the best commentary on this letter. Let us pursue them.

No. 31.

The Secretary for Foreign Affairs of the United States, by order of Congress, immediately wrote circular letters to the governors of the several states, dated May 3d, 1786, [No. 31.] to obtain information, how far they had complied with the proclamation of January 14th, 1784, and the recommendation accompanying it; and April 13, 1787, Congress, desirous of removing every pretext which might continue to cloak the inexecution of the treaty, wrote a circular letter to the several states, in which, in order to produce more surely the effect desired, they demonstrate, that Congress alone possess the right of interpreting, restraining, impeding or counter-acting, the operation and execution of treaties, which, on being constitutionally made, become, by the confederation, a part of the law of the land, and as such, independent of the will and power of the legislatures: that, in this point of view, the state-acts, establishing provisions relative to the same objects, and incompatible with it, must be improper: resolving, that all such acts now existing ought to be forthwith repealed, as well to prevent their continuing to be regarded as violations of the treaty, as to avoid the disagreeable necessity of discussing their validity; recommending, in order to obviate all future disputes and questions, that every state, as well those which had passed no such acts, as those which had, should pass an act, repealing, in general terms, all acts and parts of acts repugnant to the treaty; and encouraging them to do this, by informing them that they had the strongest assurances, that an exact compliance with the treaty, on our part, would be followed by a punctual performance of it on the part of Great-Britain.

State acts of
acquies-
cence.

No. 32, 33,
34, 35, 36,
37, 38, 39,
40.
No. 41, 43,
43, 44.

S. 39. In consequence of these letters, New-Hampshire, Massachusetts, Rhode-Island, Connecticut, New-York, Delaware, Maryland, Virginia and North-Carolina, passed the acts, No. 32, 33, 34, 35, 36, 37, 38, 39, 40. New-Jersey and Pennsylvania declared that no law existed with them, repugnant to the treaty [see Documents No. 41, 42, 43.]—

Georgia

Georgia had no law existing against the treaty.—South-Carolina, indeed, had a law existing, which subjected all persons, foreign or native, [No. 44] to certain modifications of recovery and payment. But the liberality of her conduct, on the other points, is a proof she would have conformed in this also, had it appeared that the fullest conformity would have moved Great-Britain to compliance, and had an express repeal been really necessary.

S. 40. For indeed all this was supererogation. It resulted from the instrument of confederation among the states, that treaties made by Congress according to the confederation, were superior to the laws of the states. The circular letter of Congress had declared and demonstrated it, and the several states, by their acts and explanations before mentioned, had shewn it to be their own sense, as we may safely affirm it to have been the general sense of those, at least, who were of the profession of the law. Besides the proof of this, drawn from the act of confederation itself, the declaration of Congress and the acts of the states before mentioned, the same principle will be found acknowledged in several of the documents hereto annexed for other purposes. Thus, in Rhode-Island, governor Collins, in his letter, No. 20, says, "The treaty, in all *its absolute parts*, has been fully complied with, and to those parts that are merely *recommendatory*, and *depend upon the legislative discretion*, the most candid attention hath been paid." Plainly implying, that the *absolute parts* did not *depend upon the legislative discretion*. Mr. Channing the attorney for the United States, in that state, [No. 19,] speaking of an act passed before the treaty, says, "This act was considered by our courts as *annulled by the treaty of peace*, and subsequent to the ratification thereof no proceedings have been had thereon." The governor of Connecticut, in his letter, No. 18, says, "The sixth article of the treaty was immediately observed on receiving the same with the proclamation of Congress, the courts of justice adopted it as a *principle of law*. No further prosecutions were instituted against any person who came within that article, and all such prosecutions, as were then pending, were discontinued." Thus prosecutions going on, under the law of the state, were discontinued, by the treaty operating as a repeal of the law. In Pennsylvania, Mr. Lewis, Attorney for the United States, says, in his letter, No. 60, "The judges have uniformly and without hesitation, declared in favour of the treaty, on the ground of its being the supreme law of the land. On this ground, they have not only discharged attainted traitors from arrests, but have frequently declared, that they were entitled by the treaty to protection." The case of the Commonwealth v. Gordon, January 1788, Dallas's Reports 233, is a proof of this. In Maryland, in the case of Mildred v. Dorsey, cited in your letter E. 4. a law of the state, made during the war, had compelled those, who owed debts to British subjects, to pay them into

Debts.
State acts of
acquiescence.
No. 40.

Treaties
control laws.

No. 20.

No. 19.

No. 18.

No. 60.

Debts.
Treaties
control laws.

No. 52.

No. 45.

the treasury of that state. This had been done by Dorsey, before the date of the treaty; yet the judges of the *state* general court decided, that the treaty not only repealed the law for the future, but for the past also, and decreed, that the defendant should pay the money over again to the British creditor. In Virginia, Mr. Monroe, one of the senators of that state in Congress, and a lawyer of eminence, tells us, No. 52, that both court and counsel there avowed the opinion, that the treaty would control any law of the state opposed to it. And the legislature itself, in an act of October 1787, C. 36, concerning monies carried into the public loan-office, in payment of British debts, use these expressions. "And whereas it belongs not to the legislature to decide particular questions, of which the judiciary have cognizance, and it is, therefore, unfit for them to determine, whether the payments so made into the loan-office, be good or void between the creditor and debtor." In New-York, Mr. Harrison, Attorney for the United States, in that district, assures us, No. 45, that the act of 1782, of that state, relative to debts due to persons within the enemy's lines, was, immediately after the treaty, restrained *by the superior courts of the state*, from operating on British creditors, and that he did not know a single instance to the contrary: a full proof, that they considered the treaty as a law of the land paramount the law of their state.

S. 41. The very case of Rutgers v. Waddington [E. 8.] which is a subject of complaint in your letter, is a proof that the courts consider the treaty as paramount the laws of the states. Some parts of your information, as to that case, have been inexact. The state of New-York had, during the war, passed an Act [C. 16.] declaring that, in any action by the proprietor of a house or tenement against the occupant, for rent or damage, no military order should be a justification: And May 4th, 1784, after the refusal of the British to deliver up the posts in the state of New-York, that legislature revived the same Act [C. 19]. Waddington, a British subject, had occupied a brewhouse in New-York, belonging to Rutgers, an American, while the British were in possession of New-York. During a part of the time, he had only permission from the quarter-master general; for another part, he had an order of the commanding officer, to authorize his possession. After the evacuation of the city, Rutgers, under the authority of this law of the state, brought an action against Waddington, for rent and damages, in the Mayor's court of New-York. Waddington pleaded the treaty, and the court declared the treaty a justification, in opposition to the law of the state, for that portion of the time authorized by the commanding officer, his authority being competent; and gave judgment for that part in favour of the defendant. But for the time he held the house under permission of the quarter-master general only, they gave judgment

against

against the defendant, considering the permission of that officer as incompetent, according to the regulations of the existing powers. From this part of the judgment, the defendant appealed. The first part, however, was an unequivocal decision of the superior authority of the treaty over the law. The latter part could only have been founded in an opinion of the sense of the treaty in that part of the 6th article, which declares, " There shall be no future prosecutions against any person, for the part he may have taken in the war, and that no person should, on that account, suffer any future loss or damage in their property, &c." They must have understood this as only protecting actions, which were conformable with the laws and authority existing at the time and place. The tenure of the defendant under the quarter-master general was not so conformable. That under the commanding officer was. Some may think, that murders and other crimes, and offences, characterised, as such, by the authority of the time and place, where committed, were meant to be protected by this paragraph of the treaty: and, perhaps, for peace sake, this construction may be the most convenient. The Mayor's court, however, seems to have revolted at it. The defendant appealed, and the question would have been authoritatively decided by the superior court, had not an amicable compromise taken place between the parties. See Mr. Hamilton's statement of this case, No. 46.

Debt.
Treaties
control laws.

No. 46.

S. 42. The same kind of doubt brought on the arrest of John Smith Hatfield, in New-Jersey, whose case [E. 9.] is another ground of complaint in your letter. A refugee, sent out by the British as a spy, was taken within the American lines, regularly tried by a court-martial, found guilty, and executed. There was one Ball, an inhabitant of the American part of Jersey, who, contrary to the laws of his country, was in the habit of secretly supplying the British camp in Staten-Island with provisions. The first time Ball went over, after the execution of the spy, of which it does not appear he had any knowledge, and certainly no agency in his prosecution, John Smith Hatfield, a refugee also from Jersey, and some others of the same description, seized him against the express orders of the British commanding officer, brought him out of the British lines, and Hatfield hung him with his own hands. The British officer sent a message to the Americans, disavowing this act, declaring that the British had nothing to do with it, and that those, who had perpetrated the crime, ought alone to suffer for it. The right to punish the guilty individual seems to have been yielded by the one party, and accepted by the other, in exchange for that of retaliation on an innocent person; an exchange which humanity would wish to see habitual. The criminal came afterwards into the very neighbourhood, a member of which he had murdered. Peace, indeed, had now been made; but the magistrate, thinking probably, that it was for the

honest

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control
laws.

honest soldier and citizen only, and not for the murderer, and supposing, with the Mayor's court of New-York, that the paragraph of the treaty against future prosecutions meant to cover authorised acts only, and not murders and other atrocities, disavowed by the existing authority, arrested Hatfield. At the court, which met for his trial, the witnesses failed to attend. The court released the criminal from confinement, on his giving the security required by law for his appearance at another court. He fled; and you say that "as his friends doubted the disposition of the court to determine according to the terms of the treaty, they thought it more prudent to suffer the forfeiture of the recognizances, than to put his life again into jeopardy." But your information, in this, Sir, has not been exact. The recognizances are not forfeited. His friends, confident in the opinion of their counsel, and the integrity of the judges, have determined to plead the treaty, and not even give themselves the trouble of asking a release from the legislature: and the case is now depending. See the letter of Mr. Boudinot, member of Congress for Jersey. No. 47.

No. 47.
See Georgia
Gazette,
Aug. 7th,
1790.

S. 43. In Georgia, Judge Walton, in a charge to a grand jury, says, "The State of Rhode Island having acceded to the federal constitution, the union and government have become complete. To comprehend the extent of the general government, and to discern the relation between that and those of the States, will be equally our interest and duty. The constitution, laws and *treaties* of the union are *paramount*." And in the same State, in their last federal circuit court, we learn from the public papers, that in a case wherein the plaintiffs were Brailsford and others, British subjects, whose debts had been sequestered (not confiscated) by an Act of the State during the war, the judges declared the treaty of peace a repeal of the Act of the State, and gave judgment for the plaintiffs.

Judicatures
vindicated.

S. 44. The integrity of those opinions and proceedings of the several courts should have shielded them from the insinuations hazarded against them. In page 9 and 10, it is said, "That during the war, the legislatures passed laws to confiscate the estates of the loyalists, to enable debtors to pay into the State treasuries paper money, then exceedingly depreciated, in discharge of their debts." And page 24, "The dispensations of law *by the state courts* have been as unpropitious to the subjects of the crown, as the legislative acts of the different assemblies." Let us compare, if you please, sir, these unpropitious opinions of our state courts, with those of foreign lawyers writing on the same subject. * "Quod dixi de actionibus recte publicandis

* "What I have said of things in action being rightly confiscated holds thus. If the prince really exacts from his subjects what they owed to our enemies,

publicandis ita demum obtinet: si quod subditi nostri hostibus nostris debent, princeps a subditis suis revera exegerit—Si exegerit, recte solutum est; si non exegerit, pace facta, reviviscit jus pristinum creditoris”—“Secundum hæc inter gentes fere convenit, ut nominibus bello publicatis, pace deinde facta, exacta censeantur perisse, et maneat extincta; non autem exacta reviviscant et restituantur veris creditoribus.” Bynk. Q. J. P. l. 1. c. 7. But what said the judges of the State Court of Maryland in the case of Mildred and Dorsey? That a debt forced from an American debtor into the treasury of his Sovereign, is not extinct, but shall be paid over again to his British creditor. Which is most propitious, the unbiassed foreign jurist, or the American judge charged with dispensing justice with favour and partiality? But from this, you say, there is an appeal. Is that the fault of the judge, or the fault of any body? Is there a country on earth, or ought there to be one, allowing no appeal from the first errors of their courts? and if allowed from errors how will those from just judgments be prevented? In England, as in other countries, an appeal is admitted to the party thinking himself injured; and here had the judgment been against the British creditor and an appeal denied, there would have been better cause of complaint than for not having denied it to his adversary. If an *illegal* judgment be ultimately rendered on the appeal, then will arise the right to question its propriety.

S. 45. Again it is said, page 34, “In one State the *Supreme Federal Court* has thought proper to suspend for many months the final judgment on an action of debt, brought by a British creditor? If by *the Supreme Federal Court* be meant *the Supreme Court of the United States*, I have had their records examined, in order to know what may be the case here alluded to; and I am authorised to say, there neither does, nor ever did exist any cause, before that court, between a British subject and a citizen of the United States. See the certificate of the clerk of the court, No. 48. If by *the Supreme Federal Court* be meant *one of the Circuit Courts of the United States*, then which Circuit, in which State, and what case, is meant? In the course of inquiries I have been obliged to make, to find whether there exists any case, in any district of any Circuit Court of the United States, which might have given rise to this complaint, I have learnt, that an action was brought to issue, and argued in the Circuit Court of the *enemies*, if he shall have exacted it, it is rightfully paid; if he shall not have exacted it, peace being made, the former right of the creditor revives—Accordingly it is for the most part agreed among nations, that things in action being confiscated in war, the peace being made, those which were paid are deemed to have perished, and remain extinct; but those not paid, revive, and are restored to their true creditors. Bynk. Q. J. P. l. 1. c. 7.

United

Debts.
Judicatures
vindicated.

No. 48.

Debts.
Judicatures
vindicated.

United States, in Virginia, at their last term, between Jones, a British subject, plaintiff, and Walker, an American, defendant; wherein the question was the same as in the case of Mildred and Dorsey, to wit: Whether a payment into the treasury, during the war, under a law of the State, discharged the debtor? One of the judges retiring from court, in the midst of the argument, on the accident of the death of an only son, and the case being *primæ impressionis* in that court, it was adjourned for consideration till the ensuing term. Had the two remaining judges felt no motive, but of predilection to one of the parties, had they considered only to which party their wishes were propitious or unpropitious, they possibly might have decided that question on the spot. But learned enough in their science, to see difficulties which escape others, and having characters and consciences to satisfy, they followed the example so habitually and so laudably set by the courts of your country, and of every country where law, and not favour, is the rule of decision, of taking time to consider. Time and consideration are favourable to the right cause—precipitation to the wrong one.

No. 52, 53,

S. 46. You say again, p. 29, "The few attempts to recover British debts, in the county courts of Virginia, have *universally* failed, and these are the courts wherein, from the smallness of the sum, a considerable number of debts can only be recovered." And again, p. 34, "In the same state, the county courts (which alone can take cognizance of debts of limited amount) have *uniformly rejected* all suits instituted for the recovery of sums due to the subjects of the crown of Great Britain." In the first place, the county courts, till of late, have had exclusive jurisdiction only of sums below £. 10, and it is known, that a very inconsiderable proportion of the British debts consists in demands below that sum. A late law, we are told, requires, that actions below £. 30 shall be commenced in those courts; but allows, at the same time, an appeal to correct any errors into which they may fall. In the 2d place, the evidence of gentlemen who are in the way of knowing the fact [No. 52, 53,] is, that though there have been accidental checks in some of the subordinate courts, arising from the chicanery of the debtors, and sometimes, perhaps, a moment of error in the court itself, yet these particular instances have been immediately rectified, either in the same or the superior court, while the great mass of suits for the recovery of sums due to the subjects of the crown of Great Britain have been uniformly sustained to judgment and execution.

S. 47. A much broader assertion is hazarded, page 29. "In some of the southern States, there does not exist a single instance of the recovery of a British debt in their courts, though many years have expired since the establishment of peace between the two countries." The particular States

are not specified. I have, therefore, thought it my duty to extend my enquiries to all the States which could be designated under the description of Southern, to wit: Maryland, and those to the south of that.

Debts.
Judicatures
vindicated.

As to Maryland, the joint certificate of the senators and delegates of the State in congress, the letter of Mr. Tilghman, a gentleman of the law in the same State, and that of Mr. Gwinn, clerk of their General Court, prove, that British suits have been maintained in the superior and inferior courts throughout the State without any obstruction; that British claimants have, in every instance, enjoyed every facility in the tribunals of justice, equally with their own citizens; and have recovered in due course of law, and remitted large debts, as well under contracts previous as subsequent to the war.

No. 49, 50,
51.

In Virginia, the letters of Mr. Monroe and Mr. Giles, members of congress from that State, and lawyers of eminence in it, prove that the courts of law in that State have been open and freely resorted to by the British creditors, who have recovered and levied their monies without obstruction: for we have no right to consider as obstructions the dilatory pleas of here and there a debtor distressed perhaps for time, or even an accidental error of opinion in a subordinate court, when such pleas have been overruled, and such errors corrected in a due course of proceeding marked out by the laws in such cases. The general fact suffices to shew that the assertion under examination cannot be applied to this State.

No. 52, 53.

In North Carolina, Mr. Johnston, one of the senators for that State, tells us, he has heard indeed but of few suits brought by British creditors in that State: but that he never heard that any one had failed of a recovery because he was a British subject; and he names a particular case of *Elmesly v. Lee's executors*, 'of the recovery of a British debt in the superior court at Edenton.' See Mr. Johnston's letter, No. 54.

No. 54.

In South Carolina, we learn from No. 55, of particular judgments rendered, and prosecutions carried on, without obstacle, by British creditors, and that the courts are open to them there as elsewhere. As to the modifications of the execution heretofore made by the State law, having been the same for foreigner and citizen, a court would decide whether the treaty is satisfied by this equal measure; and if the British creditor is privileged by that against even the same modifications to which citizens and foreigners of all other nations were equally subjected, then the law imposing them was a mere nullity.

No. 55.

In Georgia, the letter of the senators and representatives in congress, No. 56, assures us, that though they do not know of any recovery of a British debt in their State, neither do they know of a denial to recover since the ratification of the treaty, the creditors having mostly preferred amicable settlement; and that the Federal Court is open and unobstructed

No. 56.

Debts.
Judicatures
vindicated.

to British creditors there, as in any other of the United States; and this is further proved by the late recovery of Brailsford and others before cited.

Georgia
Cas.

No. 58.

S. 48. You say more particularly of that state, page 25. "It is to be lamented, that in a more distant state (Georgia) it was a received principle, inculcated by an opinion of the highest judicial authority there, that as no legislative act of the state existed, confirming the treaty of peace with Great-Britain, war still continued between the two countries; a principle which may perhaps still continue in that state. No judge, no case, no time, is named. Imputations on the judiciary of a country are too serious to be neglected. I have thought it my duty therefore to spare no endeavours to find on what fact this censure was meant to be affixed. I have found that judge Walton of Georgia, in the summer of 1783, the definitive treaty not yet signed in Europe, much less known and ratified here, set aside a writ in the case of Thompson a British subject v. Thompson, assigning for reasons, 1st. "That there was no law authorising a subject of England to sue a citizen of that state; 2d. That the war had not been *definitively* concluded; or 3d. if concluded, the treaty not *known to, or ratified by*, the legislature, nor 4th. was it in any manner ascertained how those debts were to be liquidated." With respect to the last reason, it was generally expected that some more specific arrangements, as to the manner of liquidating, and times of paying British debts, would have been settled in the definitive treaty. No. 58, shews that such arrangements were under contemplation. And the judge seems to have been of opinion, that it was necessary the treaty should be *definitively* concluded, before it could become a law of the land, so as to change the legal character of an *alien enemy*, who cannot maintain an action, into that of an *alien friend*, who may. Without entering into the question, whether between the provisional and definitive treaties, a subject of either party could maintain an action in the courts of the other (a question of no consequence, considering how short the interval was, and this, probably, the only action essayed), we must admit that if the judge was right in his opinion, that a *definitive* conclusion was necessary, he was right in his consequence that it should be *made known* to the legislature of the state, or in other words to the state, and that, till that *notification*, it was not a law authorising a subject of England to sue a citizen of that state. The subsequent doctrine of the same judge Walton, with respect to treaties, *when duly completed*, that they are paramount the laws of the several states, as has been seen in his charge to a grand jury before spoken of (S. 43.), will relieve your doubts whether the "principle still continues in that state of the *continuance of war between the two countries*."

S. 49. The latter part of the quotation before made merits notice also,

to wit, where, after saying not a single instance exists of the recovery of a British debt, it is added, " though many years have expired since the establishment of peace between the two countries." It is evident from the preceding testimony, that many suits have been brought, and with effect: yet it has often been matter of surprise that more were not brought, and earlier, since it is most certain that the courts would have sustained their actions, and given them judgments. This abstinence on the part of the creditors has excited a suspicion that they wished rather to recur to the treasury of their own country; and to have colour for this, they would have it believed that there were obstructions here to the bringing their suits. Their testimony is in fact the sole, to which your court till now has given access. Had the opportunity now presented been given us sooner, they should sooner have known that the courts of the United States, whenever the creditors would chuse that recourse, and would press, if necessary, to the highest tribunals, would be found as open to their suits, and as impartial to their subjects, as theirs to ours.

Debt.
Georgia
Gaz.

S. 50. There is an expression in your letter, 'pa. 7, that " British creditors have not been countenanced or supported, either by the respective legislatures, or by the state courts, in their endeavours to recover the full value of debts contracted antecedently to the treaty of peace." And again, in page 8, " In many of the states, the subjects of the crown, in endeavouring to obtain the restitution of their forfeited estates and property, have been treated with indignity." From which an inference might be drawn, which I am sure you did not intend, to wit, That the creditors have been deterred from resorting to the courts by popular tumults, and not protected by the laws of the country. I recollect to have heard of one or two attempts, by popular collections, to deter the prosecution of British claims. One of these is mentioned in No. 49. But these were immediately on the close of the war, while its passions had not yet had time to subside, and while the ashes of our houses were still smoking. Since that, say for many years past, nothing like popular interposition, on this subject, has been heard of, in any part of our land. There is no country which is not sometimes subject to irregular interpositions of the people. There is no country able, at all times, to punish them. There is no country which has less of this to reproach itself with than the United States, nor any where the laws have a more regular course, or are more habitually and cheerfully acquiesced in. Confident that your own observation and information will have satisfied you of this truth, I rely that the inference was not intended, which seems to result from these expressions.

Popular In-
terference.

S. 51. Some notice is to be taken as to the great deficiencies in collection urged on behalf of the British merchants. The course of our commerce with Great-Britain was ever, for the merchant there to give his

Present state
of debt.

Present
State of
Debt.

correspondent here a year's credit : So that we were regularly indebted from a year to a year and a half's amount of our exports. It is the opinion of judicious merchants, that it never exceeded the latter term, and that it did not exceed the former at the commencement of the war. Let the holders then of this debt be classed into, 1st. Those who were insolvent at that time. 2d. Those solvent then, who became insolvent during the operations of the war—a numerous class. 3d. Those solvent at the close of the war, but insolvent now. 4th. Those solvent at the close of the war, who have since paid or settled satisfactorily with their creditors—a numerous class also. 5th. Those solvent then and now, who have neither paid, nor made satisfactory arrangements with their creditors. This last class, the only one now in question, is little numerous, and the amount of their debts but a moderate proportion of the aggregate which was due at the commencement of the war ; inasmuch that it is the opinion, that we do not owe to Great Britain, at this moment, of separate debts, old and new, more than a year or a year and a quarter's exports, the ordinary amount of the debt resulting from the common course of dealings.

Recrimina-
tion on
British
courts.

S. 52. In drawing a comparison between the proceedings of Great-Britain and the United States, you say, page 35, " The conduct of Great-Britain, in all these respects, has been widely different from that which has been observed by the United States. In the courts of law of the former country, the citizens of the United States have experienced, *without exception*, the same protection and *impartial* distribution of justice, as the subjects of the crown." No nation can answer for perfect exactitude of proceedings in all their inferior courts. It suffices to provide a supreme judicature, where all error and partiality will be ultimately corrected. With this qualification, we have heretofore been in the habit of considering the administration of justice in Great-Britain as extremely pure. With the same qualification, we have no fear to risk every thing which a nation holds dear, on the assertion, that the administration of justice here will be found equally pure. When the citizens of either party complain of the judiciary proceedings of the other, they naturally present but one side of the case to view, and are, therefore, to be listened to with caution. Numerous condemnations have taken place in your courts, of vessels taken from us after the expirations of the terms of one and two months stipulated in the armistice. The State of Maryland has been making ineffectual efforts, for nine years, to recover a sum of £. 55,000 sterling, lodged in the Bank of England previous to the war. A judge of the King's Bench lately declared, in the case of Greene, an American citizen, v. Buchanan and Charnock, British subjects, that a citizen of the United States, who has delivered £. 43,000 sterling worth of East-India goods to a British subject at Ostend, receiving
£. 18,000

£. 18,000 in part payment, is not entitled to maintain an action for the balance in a court of Great-Britain, though his debtor is found there, is in custody of the court, and acknowledges the facts. These cases appear strong to us. If your judges have done wrong in them, we expect redress: if right, we expect explanations. Some of them have already been laid before your court: the others will be so, in due time. These, and such as these, are the smaller matters between the two nations, which, in my letter of Dec. 15, I had the honour to intimate, that it would be better to refer for settlement through the ordinary channel of our ministers, than embarrass the present important discussions with them. Such cases will be constantly produced by a collision of interests in the dealings of individuals, and will be easily adjusted by a readiness to do right on both sides, regardless of party.

Recrimination on British courts.

S. 53. It is made an objection to the proceedings of our legislative and judiciary bodies, that they have refused to allow interest to run on debts during the course of the war. The decision of the right to this, rests with the judiciary alone; neither the legislative nor the executive having any authority to intermeddle.

III. Interest.

The administration of justice is a branch of the sovereignty over a country, and belongs exclusively to the nation inhabiting it. No foreign power can pretend to participate in their jurisdiction, or that their citizens received there are not subject to it. When a cause has been adjudged according to the rules and forms of the country, its justice ought to be presumed. Even error in the highest court which has been provided as the last means of correcting the errors of others, and whose decrees are therefore subject to no further revival, is one of those inconveniences flowing from the imperfection of our faculties, to which every society must submit; because there must be somewhere a last resort, wherein contentions may end. Multiply bodies of revival as you please, their number must still be finite, and they must finish in the hands of fallible men as judges. If the error be evident, palpable, * *et in re minime dubia*, it then indeed assumes another form; it excites presumption that it was not mere error, but premeditated wrong; and the foreigner, as well as native, suffering by the wrong, may reasonably complain, as for a wrong committed in any other way. In such case, there being no redress in the ordinary forms of the country, a foreign prince may listen to complaint from his subjects injured by the adjudication; may enquire into its principles, to prove their criminality; and, according to the magnitude of the wrong, take his measures of redress by reprisal, or by a refusal of right

* *In a matter susceptible of no doubt.*

Debt.
Interest.

on his part. If the denial of interest, in our case, be justified by law, ~~or~~ even if it be against law, but not in that gross, evident, and palpable degree which proves it to flow from the wickedness of the heart, and not error of the head in the judges, then is it no cause for just complaint, much less for a refusal of right, or self-redress in any other way. The reasons on which the denial of interest is grounded shall be stated summarily, yet sufficiently to justify the integrity of the judge, and even to induce a presumption that they might be extended to that of his science also, were that material to the present object.

S. 54. The treaty is the text of the law in the present case, and its words are, that there shall be no lawful impediment to the recovery of *bona fide debts*. Nothing is said of *interest* on those debts: and the sole question is, whether, where a *debt* is given, *interest* thereon flows from the general principles of the law? Interest is not a part of the debt, but something added to the debt by way of damage for the detention of it. This is the definition of the English lawyers themselves, who say, "Interest is recovered by way of *damages*,^{*} *ratione detentionis debiti*." 2 Salk. 622, 623. Formerly all interest was considered as unlawful in every country of Europe: it is still so in Roman catholic countries, and countries little commercial. From this, as a general rule, a few special cases are excepted. In France, particularly, the exceptions are those of minors, marriage portions, and money the price of lands. So thoroughly do their laws condemn the allowance of interest, that a party who has paid it voluntarily, may recover it back again whenever he pleases. Yet this has never been taken up as a gross and flagrant denial of justice, authorising national complaint against those governments. In England also, all interest was against law, till the Stat. 37 H. 8. c. 9. the growing spirit of commerce, no longer restrained by the principles of the Roman church, then first began to tolerate it. The same causes produced the same effect in Holland, and, perhaps, in some other commercial and acatholic countries. But even in England the allowance of interest is not given by *express law*, but rests on the *discretion of judges and juries*, as the arbiters of damages. Sometimes the judge has enlarged the interest to 10 per cent. per annum. (1 Chanc. Rep. 57.) In other cases he fixes it habitually one per cent. lower than the legal rate (2 Te. Atk. 343); and in a multitude of cases he refuses it altogether. As for instance, no interest is allowed,

1. On arrears of rents, profits, or annuities (1 Chan. Rep. 184. 2 P.W. 163. Ca. temp. Talbot 2.).
2. For maintenance. Vin. Abr. Interest. c. 10.

* On account of the detention of the debt.

3. For monies advanced by Ex'rs. 2 Abr. Eq. 531. 15.
4. For goods sold and delivered. 3 Wilson, 206.
On book-debts, open accounts, or simple contracts. 3 Chan. Rep. 64.
Freem. Ch. Rep. 133. Dougl. 376.
6. For money lent without a note. 2 Stra. 910.
7. On an inland bill of exchange, if no protest is taken. 2 Stra. 910.
8. On a bond after 20 years. 2 Vern. 458. or after a tender.
9. On a decree in certain cases. Freem. Ch. Rep. 181.
10. On judgments in certain cases, as battery and slander. Freem. Ch. Rep. 37.
11. On any decrees or judgments in certain courts, as the exchequer chamber. Douglass, 753.
12. On costs. 2 Abr. Eq. 530. 7.

And we may add, once for all, that there is no instrument or title to debt so formal and sacred as to give a right to interest on it under all possible circumstances. The words of Lord Mansfield, Dougl. 753, where he says "That the question was what was to be the rule for assessing the *damage*, and that, in this case, the *interest* ought to be the *measure of the damage*, the action being for a *debt*, but in a case of another sort *the rule might be different*: his words, Dougl. 376. 'That interest might be payable in 'cases of delay, if a jury, *in their discretion*, shall think fit to allow it.' And the doctrine in *Giles v. Hart*. 2 Salk. 622. that damages, or interest, are but an accessory to the debt, which may be barred by circumstances which do not touch the debt itself, suffice to prove that interest is not a part of the debt, neither comprehended in the thing, nor in the term; that words, which pass the debt, do not give interest necessarily; that the interest depends altogether on the discretion of the judges and jurors, who will govern themselves by all existing circumstances—will take the legal interest for the measure of their damages, or more or less, as they think right—will give it from the date of the contract, or from a year after—or deny it altogether, according as the fault or the sufferings of the one or the other party shall dictate. Our laws are, generally, an adoption of yours: and I do not know that any of the States have changed them in this particular. But there is one rule of your and our law, which, while it proves that every title of debt is liable to a disallowance of interest under special circumstances, is so applicable to our case, that I shall cite it as a text, and apply to it the circumstances of our case. It is laid down in *Vin. Abr. Interest*, c. 7. and 2 Abr. Eq. 5293, and elsewhere, in these words: 'Where, by a general and national calamity, nothing is made out of lands which are assigned for payment of interest, it ought not to run on *during the time of such calamity*.' This is exactly the case in question.—Can a
more

Interest.

more *general national calamity* be conceived than that universal devastation which took place, in many of these States, during the war? Was it ever more exactly the case any where, *that nothing was made out of the lands which were to pay the interest?* The produce of those lands, for want of the opportunity of exporting it safely, was down to almost nothing in real money, e. g. Tobacco was less than a dollar the hundred weight. Imported articles of clothing or consumption were from 4 to 8 times their usual price. A bushel of salt was usually sold for 100lb. of tobacco. At the same time these lands, and other property, in which the money of the British creditors was vested, were paying high taxes for their own protection; and the debtor, as nominal holder, stood ultimate insurer of their value to the creditor, who was the real proprietor, because they were bought with his money. And who will estimate the value of this insurance, or say what would have been the forfeit, in a contrary event of the war? Who will say that the risk of the property was not worth the interest of its price? *General calamity* then prevented profit, and consequently stopped interest, which is in lieu of profit. The creditor says, indeed, he has laid out of his money; he has therefore lost the use of it. The debtor replies, that if the creditor has lost, he has not gained it: that this may be a question between two parties, both of whom have lost. In that case the courts will not double the loss of the one, to save all loss from the other. That it is a rule of natural, as well as municipal law, that, in questions *de damno evitando melior est conditio possidentis*. If this maxim be just where each party is equally innocent, how much more so where the loss has been produced by the act of the creditor? For a nation, as a society, forms a moral person, and every member of it is personally responsible for his society. It was the act of the lender, or of his nation, which annihilated the profits of the money lent; he cannot then demand profits which he either prevented from coming into existence, or burnt or otherwise destroyed after they were produced. If then there be no instrument or title of debt so formal and sacred as to give right to interest under all possible circumstances, and if circumstances of exemption, stronger than in the present case, cannot possibly be found, then no instrument or title of debt, however formal or sacred, can give right to interest under the circumstances of our case.—Let us present the question in another point of view. Your own law forbade the payment of interest when it forbade the receipt of American produce into Great-Britain, and made that produce fair prize on its way from the debtor to the creditor, or to any other for his use and reimbursement. All personal access between creditor and debtor was made illegal: and the debtor who endeavoured to make a remittance of his debt,

or

or interest, must have done it three times, to answer its getting once to hand: for two out of three vessels were generally taken by the creditor nation, and sometimes by the creditor himself, as many of them turned their trading vessels into privateers. Where no place has been agreed on for the payment of a debt, the laws of England oblige the debtor to seek his creditor wheresoever he is to be found *within the realm*: Coke Lit. 210. b. but do not bind him to go out of the realm in search of him. This is our law too. The first act, generally, of the creditors and their agents here, was to withdraw from the United States with their books and papers. The creditor thus withdrawing from his debtor, so as to render payment impossible, either of the principal or interest, makes it like the common case of a tender and refusal of money, after which interest stops both by your laws and ours. We see too from the letter of Mr. Adams, June 16, 1786, No. 57, that the British Secretary for foreign affairs was sensible, that a British statute having rendered criminal all intercourse between the debtor and creditor, had placed the article of interest on a different footing from the principal. And the letter of our Plenipotentiaries to Mr. Hartley, the British Plenipotentiary for forming the definitive treaty, No. 58, shews that the omission to express *interest* in the treaty was not merely an oversight of the parties; that its allowance was considered by our plenipotentiaries as a thing not to be intended in the treaty, was declared against by Congress, and that declaration communicated to Mr. Hartley. After such an explanation, the omission is a proof of acquiescence, and an intention not to claim it. It appears then, that the *debt*, and *interest* on that debt, are separate things in every country, and under separate rules. That in every country a *debt* is recoverable, while, in most countries, interest is refused in all cases; in others, given or refused, diminished or augmented, at the discretion of the judge; no where given in all cases indiscriminately, and consequently no where so incorporated with the *debt*, as to pass with that *ex vi termini*, or otherwise to be considered as a determinate and vestat thing.

No. 57.

No. 58.

While the taking *interest on money* has thus been considered in some countries as morally wrong in all cases, in others made legally right but in particular cases, the taking *profits from lands*, or rents in lieu of profits, has been allowed every where, and at all times, both in morality and law. Hence it is laid down as a general rule, Wolf, f. 229: * *Si quis fundum alienum possidet, domini est quantum valet usus fundi, et possessoris quantum valet ejus cultura et cura.* But even in the case of lands restored by

* *If any one is in possession of another's land, so much belongs to the owner as the use of the land is worth, and so much to the possessor as his labour and care are worth.*

Interest.

a treaty, the *arrears* of profits or rents are never restored, unless they be particularly stipulated. '† Si res vi pacis restituendae, restituendi quoque sunt fructus à die *concessionis*,' says Wolf, f. 1224. And Grotius, 'Cum pace res conceditur, ei et fructus conceduntur à *tempore concessionis*: NON RETRO.' L. 3. c. 20. f. 22. To place the right to interest on money on a level with the right to profits on land, is placing it more advantageously than has been hitherto authorized; and if, as we have seen, a stipulation to restore *lands* does not include a stipulation to restore the *back profits*, we may certainly conclude a fortiori that the restitution of *debts* does not include an allowance of *back interest* on them.

These reasons, and others like these, have probably operated on the different courts to produce decisions that 'no interest should run during the time this general and national calamity lasted.' And they seem sufficient, at least, to rescue their decisions from that flagrant denial of right, which can alone authorize one nation to come forward with complaints against the judiciary proceedings of another.

S. 55. The states have been uniform in the allowance of interest before and since the war, but not of that claimed during the war. Thus we know by [E. 1.] the case of Neate's executors *v.* Sands in New-York, and Mildred *v.* Dorsey in Maryland, that in those states, interest during the war is disallowed by the courts. By [D. 8.] 1784, May, the act relating to debts due to persons who have been, and remained within the enemy's power or lines during the late war. That Connecticut left it to their court of chancery to determine the matter according to the rules of equity, or to leave it to referees; by [E. 2.] the case of Osborne *v.* Mifflin's executors, and [E. 3.] Hare *v.* Allen, explained in the letter of Mr. Rawle, attorney of the United States, No. 59. And by the letter of Mr. Lewis, judge of the district court of the United States, No. 60, that in Pennsylvania the rule is, that where neither the creditor nor any agent was within the state, no interest was allowed; where either remained, they gave interest. In all the other states I believe it is left discretionary in the courts and juries. In Massachusetts the practice has varied. In November, 1784, they instruct their delegates in Congress to ask the determination of Congress, whether they understood the word 'debts' in the treaty as including interest? and whether it is their opinion, that interest during the war should be paid? and at the same time they pass [D. 9.] the act directing the courts to suspend rendering judgment for any interest that might have

No. 59.

No. 60.

† 'If things are to be restored by virtue of the peace, the profits are also to be restored from the day of the cession.

'To whomsoever a thing is conceded by the peace, to him also the profits are conceded, from the time of the concession, BUT NOT BACK.'

accrued

accrued between April 19, 1775, and January 20, 1783. But in 1787, *Interest*, when there was a general compliance enacted through all the United States, in order to see if that would produce a counter-compliance, their legislature passed the act repealing all laws repugnant to the treaty, No. 33; and their courts, on their part, changed their rule relative to interest during the war, which they have uniformly allowed since that time. The circuit court of the United States, at their sessions at in 1790, determined in like manner that interest should be allowed during the war. So that on the whole, we see that, in one state, interest during the war is given in every case, in another it is given wherever the creditor, or any agent for him, remained in the country, so as to be accessible; in the others, it is left to the courts and juries to decide according to their discretion and the circumstances of the case.

TO RECAPITULATE.

S. 56. I have, by way of PRELIMINARY, placed out of the present discussion, all acts and proceedings PRIOR to the TREATY OF PEACE, considering them as settled by that instrument, and that the then state of THINGS was adopted by the parties,

With such alterations only as that instrument provided.

I have then taken up the SUBSEQUENT ACTS and PROCEEDINGS, of which you complain as infractions, distributing them according to their subjects, to wit :

I. EXILE AND CONFISCATIONS.

II. DEBTS.

III. INTEREST.

I. EXILE AND CONFISCATIONS. After premising, that these are lawful acts of war, I have shewn that the 5th article was RECOMMENDATORY only, its stipulations being, not to *restore* the confiscations and exiles, but to *recommend* to the state legislatures to restore them.

That this word, having but one meaning, establishes the intent of the parties; and moreover, that it was particularly explained by the American negociators, that the legislatures would be free to comply with the recommendation or not, and probably would not comply.

That the British *negociators* so understood it :

That the British *ministry* so understood it :

And the members of both houses of *parliament*, as well those who approved, as who disapproved, the article.

I have shewn, that Congress did recommend earnestly and bona fide :

That the States refused or complied, in a greater or less degree, accord-

ing to circumstances, but more of them, and in a greater degree, than was expected.

And that compensation, by the British treasury, to British sufferers, was the alternative of her own choice, our negotiators having offered to do that, if she would compensate such losses as we had sustained by acts unauthorized by the modern and moderate principles of war.

II. Before entering on the subject of DEBTS, it was necessary

1. To review the British infractions, and refer them to their exact dates.

To shew, that the carrying away of the *negroes* preceded the 6th of May, 1783.

That instead of evacuating the *upper posts with all convenient speed*, no order had been received for the evacuation, Aug. 13, 1783.

None had been received May 10, 1784.

None had been received July 13, 1784.

From whence I conclude none had ever been *given*,

And thence, that none had ever been *intended*.

In the latter case, this infraction would date from the signature of the treaty. But founding it on the *not giving the order with convenient speed*, it dates from April, 1783, when the order for evacuating New York was given, as there can be no reason why it should have been inconvenient to give this order as early.

The INFRACTION then, respecting the upper POSTS, was before the treaty was known in America.

That respecting the negroes, was as soon as it was known.

I have observed, that these infractions were highly injurious.

The first, by depriving us of our FUR TRADE, profitable in itself, and valuable as a means of remittance for paying the debts; by intercepting our friendly and neighbourly intercourse with the Indian nations, and consequently keeping us in constant, expensive, and barbarous war with them.

The second, by withdrawing the cultivators of the soil, the produce of which was to pay the debts.

2. After fixing the date of the British infractions, I have shewn,

That as they *preceded*, so they *produced*, the Acts on our part complained of, as obstacles to the recovery of the debts:

That when one party breaks any stipulation of a treaty, the other is free to break it also, either in the whole, or in equivalent parts, at its pleasure.

That Congress having made no elections,

Four of the States assumed, separately, to modify the recovery of debts.

1. By indulging their citizens with longer and more practicable times of payment.
2. By liberating their bodies from execution, on their delivering property to the creditor, to the full amount of his demand, on a fair appraisement, as practised always under the ELEGIT.
3. By admitting, during the first moments of the non-existence of coin among us, a discharge of executions, by payment in paper money.

That the first of these Acts of retaliation was in Dec. 1783, nine months after the infractions committed by the other party.

And all of them were so moderate, of so short duration, the result of such necessities, and so produced, that we might, with confidence, have referred them alterius principis, qua boni viri, arbitrio.

3. That induced, at length, by assurances from the British court, that they would concur in a fulfilment of the treaty,

Congress, in 1787, declared to the States, its will, that even the appearance of obstacle, raised by their Acts, should no longer continue,

And required a formal repeal of every Act of that nature; and to avoid question, required it, as well from those who had not, as from those who had passed such Acts; which was complied with so fully, that no such laws remained in any State of the Union, except one;

And even that one could not have forborne, if any symptom of compliance from the opposite party had rendered a reiterated requisition from Congress important.

4. That, indeed, the requiring such a repeal, was only to take away pretext:

For that it was at all times perfectly understood, that TREATIES CONTROLLED the laws of the States.

The confederation having made them obligatory on the whole;

Congress having so declared and demonstrated them:

The legislatures and executives of most of the States having admitted it:

And the judiciaries, both of the separate and general governments, so deciding.

That the courts are open every where, upon this principle:

That the British creditors have, for some time, been in the habit and course of recovering their debts at law.

That the class of separate and unsettled debts contracted before the war, forms now but a small proportion of the original amount.

That the integrity and independence of the courts of justice, in the United States, are liable to no reproach.

Nic

Nor have popular tumults furnished any ground for suggesting, that either courts or creditors are overawed by them in their proceedings.

III. PROCEEDING to the ARTICLE of INTEREST, I have observed,

That the decision, whether it shall or shall not be allowed *during the war*, rests, by our constitution, with the courts altogether.

That if these have generally decided against the allowance, the reasons of their decision appear so weighty, as to clear them from the charge of that palpable degree of wrong, which may authorise national complaint, or give a right of refusing execution of the treaty, by way of reprisal.

To vindicate them, I have stated shortly, some of the reasons which support their opinion.

That INTEREST DURING THE WAR was not *expressly* given by the treaty :

That the revival of DEBTS did not *ex vi termini* give interest on them :

That interest is not a part of the debt, but damages for the detention of the debt :

That it is disallowed habitually in most countries :

Yet has never been deemed a ground of national complaint against them :

That in England also, it was formerly unlawful in all cases :

That at this day it is denied there, in such a variety of instances, as to protect from it a great part of the transactions of life :

That, in fact, there is not a single *title* to debt, so formal and sacred, as to give a right to INTEREST, under all possible circumstances, either there or here.

That of these circumstances, judges and jurors are to decide, *in their discretion*, and are accordingly in the habit of augmenting, diminishing, or refusing interest, in every case, according to their discretion :

That the circumstances against the allowance are unquestionably of the strongest in our case :

That a *great national calamity* rendering the lands unproductive which were to pay the interest, has been adjudged a sufficient cause, of itself, to suspend interest :

That were both plaintiff and defendant equally innocent of that cause,

The question, Who should avoid loss? would be in favour of the party in possession :

And a fortiori in his favour, where the calamity was produced by the act of the demandant :

That, moreover, the laws of the party creditor had cut off the *personal* access of his debtor :

And the transportation of his *produce* or *money* to the country of the creditor, or to any other for him:

And where the creditor prevents payment both of **PRINCIPAL AND INTEREST**, the latter, at least, is justly extinguished:

That the *departure* of the creditor, leaving no agent in the country of the debtor, would have stopped interest of itself:

The debtor not being obliged to go out of the country to seek him:

That the British minister was heretofore sensible of the weight of the objections to the claim of interest:

That the declarations of Congress, and our plenipotentiaries, *previous to the definitive treaty*, and the silence of that instrument, afford proof that interest was not intended, on our part, nor insisted on, on the other:

That were we to admit interest on money to equal favour with profits on land, arrears of profits would not be demandable in the present case, nor consequently arrears of interest:

And, on the whole, without undertaking to say what the law is, which is not the province of the executive,

We say, that the reasons of those judges who deny interest during the war, *appear sufficiently cogent*,

To account for their opinion on honest principles:

To exempt it from the charge of palpable and flagrant wrong, in *re minimè dubià*:

And to take away all pretence of withholding execution of the treaty, by way of reprisal for that cause.

S. 57. I have now, Sir, gone through the several acts and proceedings enumerated in your Appendix, as infractions of the treaty; omitting, I believe, not a single one, as may be seen by a table hereto subjoined, wherein every one of them, as marked and numbered in your Appendix, is referred to the section of this letter, in which it is brought into view, and the result has been, as you have seen,

1. That there was no absolute stipulation to restore *antecedent* confiscations, and that none *subsequent* took place.

2. That the recovery of the debts was obstructed *validly* in none of our states, *invalidly* only in a few, and that not till long after the infractions committed on the other side; and

3. That the decisions of courts and juries against the claims of interest are too probably founded to give cause for questioning their integrity. These things being evident, I cannot but flatter myself, after the assurances,

ances received from you of his Britannic Majesty's desire to remove every occasion of misunderstanding from between us, that an end will now be put to the disquieting situation of the two countries, by a complete execution of the treaty as circumstances render practicable at this late day: That it is to be done so late has been the source of heavy losses of blood and treasure to the United States. Still our desire of friendly accommodation is, and has been constant. No 'lawful impediment' has been opposed to the prosecution of the just rights of your citizens.' And if any instances of *unlawful* impediment have existed in any of the inferior tribunals, they would, like other unlawful proceedings, have been overruled on an appeal to the higher courts. If not over-ruled there, a complaint to the government would have been regular, and their interference probably effectual. If your citizens would not prosecute their rights, it was impossible they should recover them, or be denied recovery; and till a denial of right through all the tribunals, there is no ground for complaint, much less for a refusal to comply with solemn stipulations, the execution of which is too important to us ever to be dispensed with. These difficulties being removed from between the two nations, I am persuaded the interests of both will be found in the strictest friendship. The considerations which lead to it are too numerous and forcible to fail of their effect; and that they may be permitted to have their full effect, no one wishes more sincerely, than he, who has the honour to be, with sentiments of the most perfect esteem and respect,

Sir,

Your most obedient and most humble servant,

TH. JEFFERSON.

PHILADELPHIA, May 29, 1792.

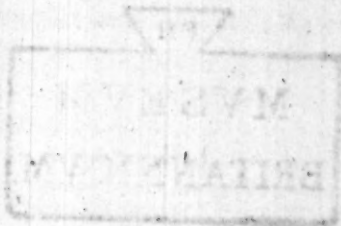
A. 1. § 2.	A. 20. § 2.	B. 5. § 11.	C. 14. § 20.	D. 14. § 31.
2. § 2.	21. § 2.	6. § 11.	15. § 2. 16.	15. § 34.
3. § 2.	22. § 2.	7. § 10.	16. § 2. 41.	16. § 2. 32.
4. § 2.	23. § 2.	8. § 10.	17. § 2.	17. § 33.
5. § 19.	24. § 2.	9. § 14.	18. § 2.	18. § 33.
6. § 2.	25. § 2.	10. § 14.	19. § 41.	19. § 34.
7. § 2.	26. § 2.	C. 1. § 12.	D. 1. § 2.	20. § 31.
8. § 2.	27. § 2.	2. § 21.	2. § 2.	21. § 31.
9. § 2.	28. § 2.	3. § 10.	3. § 2.	22. § 31.
10. § 2.	29. § 2.	4. § 18.	4. § 2.	E. 1. § 55.
11. § 2.	30. § 2. 10.	5. § 13.	5. § 30.	2. § 55.
12. § 2.	31. § 11.	6. § 13.	6. § 2.	3. § 55.
13. § 2.	32. § 2.	7. § 12.	7. § 31.	4. § 40. 44.
14. § 2.	33. § 17.	8. § 8.	8. § 55.	5. § 2.
15. § 2.	34. § 2.	9. § 11.	9. § 55.	6. § 30.
16. § 2.	B. 1. § 21.	10. § 2.	10. § 2.	7. § 30.
17. § 2.	2. § 12.	11. § 20.	11. § 12. 14.	8. § 41.
18. § 2.	3. § 12.	12. § 20.	12. § 32.	9. § 42.
19. § 2.	4. § 10.	13. § 20.	13. § 33.	

APPENDIX,

APPENDIX, No. 1.

An Act for the better securing and preserving his Majesty's dock-yards, magazines, ships, ammunition and stores. See 1 Journal Congress, 68, "persons *charged* with committing any offence therein described, in any place out of the realm, may be tried any where within the realm, whereby inhabitants of these colonies may, in sundry cases, by that statute made capital, be deprived of a trial by peers of the vicinage."

1772,
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BOOKS PRINTED FOR
J. DEBRETT.

This Day is published,

NUMBERS I. and II. of the DEBATES of the PRESENT
SESSION,

Containing the Important DEBATE on the ADDRESS to His MAJESTY, including the Speeches of VISCOUNT CLIFDEN, Sir PETER BURRELL, Earl of WYCOMBE, Colonel TARLETON, Mr. COURTENAY, Earl of MORNINGTON, Mr. SHERIDAN, Mr. WINDHAM, Mr. Secretary DUNDAS, Mr. FOX, and Mr. Chancellor PITT, &c. &c. revised and collated with the Notes of several Members,

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